

VOLUME II

**TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1964**

**No. 296**

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**THE GOODYEAR TIRE & RUBBER COMPANY,  
PETITIONER,**

**vs.**

**FEDERAL TRADE COMMISSION.**

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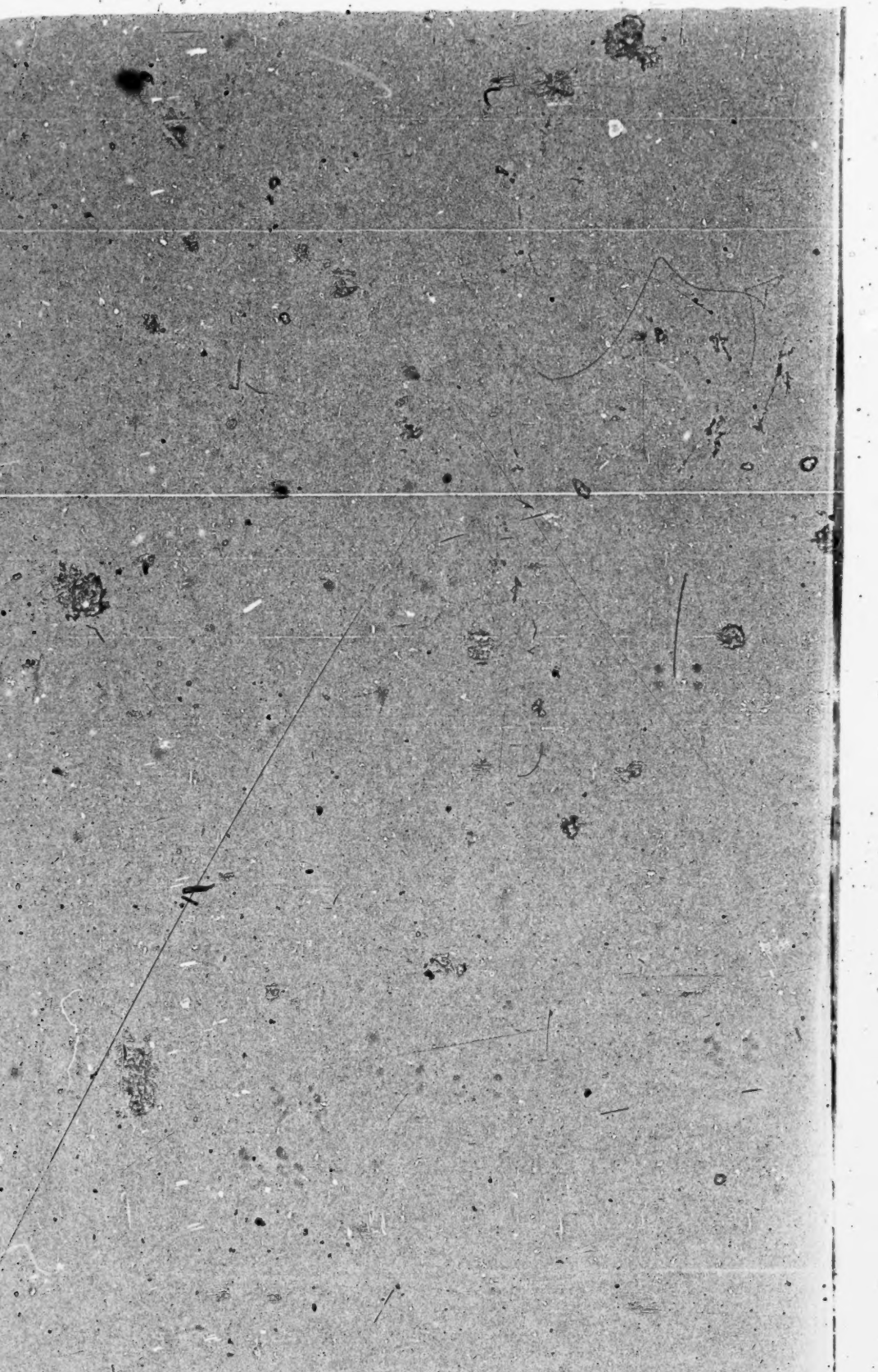
**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT**

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**PETITION FOR CERTIORARI FILED JULY 17, 1964  
CERTIORARI GRANTED DECEMBER 14, 1964**





**VOL. II, pp. 853 to 1610**

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**In the**  
**United States Court of Appeals**  
**For the Seventh Circuit**

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**No. 13339**

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**THE GOODYEAR TIRE & RUBBER  
COMPANY,**

*Petitioner,*

*vs.*

**FEDERAL TRADE COMMISSION,**

*Respondent.*

Petition to Review and Set  
Aside Order of the Fed-  
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**JOINT APPENDIX.**

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**MICHAEL THOMAS LANZA** was thereupon called as a witness for the Commission and having been duly sworn, testified as follows:

*Direct Examination by Mr. Kelaher.*

Q. Will you please state your name and home address?

A. Michael Thomas Lanza. 1500 East Duval Street, Germantown, Pennsylvania.

Q. Mr. Lanza, are you associated with the Lanza Tire Service?

A. I am, sir.

Q. What is your position with them?

A. Partner.

Q. And who are the other partners in the company?

A. My two brothers.

Q. What are their names?

A. Frank and Fred.

Q. How long has your company been in business?

A. Thirteen years.

Q. And where was your company first located?

A. 420 East Mechanic Street, Germantown.

Q. That is in the city of Philadelphia?

966 A. Yes, sir.

Q. How long were you at that location?

A. 12 years.

Q. And after that time, did you move to a new location?

A. 525 Armstrong. That is in Philadelphia.

Q. Are you engaged in the sale and distribution of new tires and tubes?

A. I am, sir.

Q. What tires do you sell?

A. Mainly Goodyears and Firestones. Of course if they want U. S., whatever they want, I try to get them.

Q. Primarily do you sell—

A. Goodyear and Firestone.

Q. Do you sell batteries?

A. Exide batteries.

Q. Are you also engaged in a recapping business?

A. That is my main business, recapping.

Q. Now what is your marketing area? In which area do you sell these products?

A. Northeast, part of Bucks County, part of Montgomery County, and North Philadelphia.

Q. When you say Northeast, are you referring to Northeast Philadelphia?

A. Out towards Bristol.

Q. Do you have delivery trucks?

967 A. Yes, sir.

Q. How many?

A. One delivery truck and we have two trucks on the road.

Q. Two trucks on the road?

A. Yes, sir.

Q. So in all you have three trucks which are used for delivery of merchandise to the customers?

A. Yes, three moving trucks.

Q. And are you, yourself, an outside salesman for the firm?

A. I am.

Q. Do you employ any other outside salesmen?

A. One.

Q. Is the other outside salesman compensated on a salary or a commission, or both?

A. Salary.

Q. Are there any Atlantic service stations in your trading area?

A. I would say anywhere from 45 to 50, possibly 60.

Q. Is your company generally competitive as to price, quality and service with other sellers of TBA products?

A. Yes, sir.

Q. Now in addition to tires and batteries, do you also sell tubes?

A. Yes, sir.

Q. What brand of tubes?

968 A. Goodyear and Firestone.

Q. Do you solicit the business of the Atlantic stations you have mentioned?

A. The ones I come in contact with, yes.

Q. Approximately how often do you solicit such stations?

A. Twice a week.

Q. Are you able to obtain recapping business from such Atlantic stations?

A. Yes, sir.

Q. Are you able to obtain new tire business from such Atlantic stations?

A. Fill-in orders.

Q. Fill-in orders?

A. Yes.

Q. Are you able to obtain stocking business?

A. No, sir.

Q. Are you able to obtain battery business from Atlantic stations?

A. When Atlantic had the Exide batteries, I used to sell a lot of them, but since they took on Goodyear batteries, I sell very few.

Q. And are you able to sell tubes to Atlantic stations?

A. Yes, sir.

Q. You are able to sell some tubes?

A. Yes.

969 Q. Are you—

Mr. Correa: (Interposing.) Just a minute. Let the witness—

Mr. Kelaher: I will withdraw the question. Strike it from the record.

By Mr. Kelaher:

Q. Are new tubes sold on a stocking or fill-in basis?

A. Mostly fill-in basis.

Q. Based on your own knowledge, do you know what line of TBA products is carried by Atlantic service stations?

A. I don't fool with that, sir. I strictly stay with tires and batteries and recapping.

Q. What type or what brand of tires do the Atlantic service stations carry?

A. Goodyears and some Firestone. It all depends. Like in Bucks and Montgomery, most of them handle Firestone.

Q. I beg your pardon?

A. In Bucks County and Montgomery County, a lot of them handle Firestone.

Q. Are you talking about Atlantic service stations?

A. Yes, sir.

Q. You are talking about the stations who own their own—

A. (Interposing.) Atlantic stations.

Q. And what type signs do you find on Atlantic service stations?

970 A. Firestone and Goodyear.

Q. When you speak of Bucks County, what part—is that north of Philadelphia?

A. It would be Northeast.

Q. Northeast. And how far up?

A. Up in Bristol, and back in Feasterville.

Q. How do you spell that?

A. F-e-a-s-t-e-r-v-i-l-l-e.

Q. Now in the Philadelphia area, what brand of TBA is carried by Atlantic stations?



A. As far as tires and batteries, it is Goodyear.

Q. Do you solicit new tire, tube and battery business from these Atlantic stations?

A: Yes, sir.

Q. And you stated that you sell on a fill-in basis only, is that correct?

A. Only, no stock orders.

971 By Mr. Kelaher:

Q. Mr. Lanza, do you know in the Philadelphia area who the Goodyear TBA suppliers are, to Atlantic service stations?

A. Up around the north, it is Fred Glenn, and then down in the northeast, it is George Harvey, or Harvey George, rather.

Mr. Kelaher: No further questions.

972 *Cross-Examination by Mr. Correa.*

Q. Mr. Lanza, you said that recapping or retreading was your main business?

A. Retreading, yes.

Q. That is really retreading, isn't it?

A. That is a better name for it, yes.

Q. That is your main business?

A. Yes, sir.

Q. And you are pretty successful retreaders, as I understand?

A. I do a lot of travelling, let's put it that way.

Q. And you have what, 20-some-odd molds?

A. We don't have them all connected, but we have approximately 22.

Q. That is a pretty big operation?

A. Yes.

Q. And most of the work is done by you, is that correct?

A. And my brothers.

Q. My information is that you personally put in 15, 16 hours a day?

A. A lot of hours.

Q. And you said on direct, I think, that that was your main business?

A. Recapping?

Q. Yes.

973 A. Yes, sir.

Q. Or retreading?

A. Yes, sir.

Q. Would you say it was 80 percent of your business?

A. I would think so.

Q. In addition to that, do you do retail business?

A. Yes, sir. Very very little though as far as door selling, but we do some; to say none at all wouldn't be right.

Q. You have retail customers?

A. Some, yes.

Q. To whom do you sell tires?

A. Mostly mine is wholesale.

Q. I see. And what portion of your business would be retailing?

A. Well, some recaps, some new tires. A very small portion of it.

Q. Ten percent, you would say?

A. About 20 percent, let's put it that way.

Q. The retreading business in recent years has become pretty profitable, hasn't it?

A. Well, I never knew what a tire was until about 13 years ago and since I have been on the road, I have seen my brothers put out some wonderful work, which made me a salesman in order to sell it.

Q. Isn't it true that over recent years in particular retreading has sort of come up?

974 A. In great momentum, yes.

Q. During the war, retreading got kind of a bad name, didn't it?

A. That was because of the merchandise.

Q. But in recent years it is quite a profitable business. I believe?

A. Yes, sir.

Q. And that would be true as contrasted with other phases of the tire business, such as even selling new tires, isn't that right?

A. Well, I don't know just how to put it. Naturally with the trend of recapping up, as it is, it would even require that you sell new tires too, because there is that many more cars on the street.

Q. But isn't actually an efficient operation such as you conduct more profitable than new tires?

A. Yes, sir.

Q. Would I be right in inferring that that accounts for the emphasis in your business on the retreading phase of it?

A. That my retreading is better—

Q. Yes.

A. Definitely, more in recapping than in new tires.

Q. You have no particular difficulty getting retreading business from Atlantic dealers, do you?

A. No, sir.

975 Q. You are quite successful in that as a matter of fact?

A. Yes, sir.

Q. Harvey George and Fred Glenn offer retreading services, don't they?

A. Yes, sir.

Q. And you have been able to outsell them to quite a few Atlantic dealers?

A. Here recently it has been getting a little bit off since you boys put up a new plant.

Q. Well, you can't blame us for trying to get your business, really.

Richard Kaiser of Abbington, Pennsylvania, is he an Atlantic dealer?

A. Yes, sir.

Q. And you have a hundred percent of his retreading business?

A. Yes, sir. He says I do anyway.

Q. Well, we will have to take his word for that, I guess.

A. Well, a lot of these guys tell you things and you take it for granted.

Q. How about Fred Phillips of Philadelphia? Is he an Atlantic dealer?

A. Yes, sir.

Q. And you have a hundred percent of his retreading business?

A. Yes, sir.

Q. And how about Charles Shock?

A. Yes, sir.

976 Q. Also of Philadelphia. Is he an Atlantic dealer?

A. Yes, in Roxborough.

Q. And you have a hundred percent of his business?

A. Yes, sir.

Q. James Amos, also Philadelphia. Is he an Atlantic dealer?

A. Yes, sir, Germantown.

Q. You have a hundred percent of his retreading business?

A. As far as I know.

Q. That is what he tells you anyway, isn't it?

A. (Nodding affirmatively.)

Q. William Barton, also Philadelphia?

A. Yes, sir.

Q. He is an Atlantic dealer, is he not?

A. Yes, sir.

Q. And you have a hundred percent of his retreading business?

A. Not here recently.

Q. Not recently?

A. No.

Q. Well, have you still substantial business of William Barton on retreading?

A. Well, I would say yes.

Q. How about George Kee? Is he an Atlantic dealer?

A. Very good recapping customer.

Q. A hundred percent of his business?

A. Yes, sir.

977 Q. How about J. Ferrari? I don't have his first name.

A. No, sir.

Q. You don't have his business?

A. No, sir.

Mr. Kelaher: What is his name?

Mr. Correa: Ferrari. I don't know what the "J" stands for.

The Witness: Joseph.

By Mr. Correa:

Q. How about D. Pinelli? I don't know what the "D" stands for.

A. Pinelli's, in North Hills?

Q. Fairless Hills, I have here.

A. Oh, Danny, yes. Of course. He is in North Hills. Not North Hills, he is in Fairless Hills. He is over in General—

Q. Fairless Hills, right. You say he is over in General—

A. (Interposing.) He has been my customer for almost a year now.

Q. When you say he is over to General, are you referring to some competitor or—

A. (Interposing.) Yes. A stipulated guarantee.

Q. What competitor is that, sir? Is that General tire and Rubber Company?

A. Yes, sir.

Q. He has become a customer of theirs for retreading, is that it?

978 A. Yes, sir.

Q. And they have a guarantee on them?

A. With every tire, that is right, which I don't get.

Q. I see. And how about Mr. Kepp of Eddington, Pennsylvania?

A. I used to have him as a customer.

Q. But not any more?

A. No, sir.

Q. Who has him now?

A. I don't know, sir.

Q. I take it you have other Atlantic dealers, other than the ones I mentioned, who have been good customers of yours for retreading?

A. Yes, sir.

Q. Do you have other Atlantic dealers other than the ones I have mentioned, who give you all of their retreading business?

A. Yes, sir. I have all types of dealers, such as Calso, Sinclair, Tydol.

Q. I wish you all the continued success in your business.  
Mr. Correa: That is all.

By Mr. Thompson:

Q. Mr. Lanza: I represent the Atlantic Refining Company. Who is your principal competitor? Does Harris & Leonard operate in your territory?



A. I don't know of him, sir.

Q. There are other people who handle retreading  
979 and recapping business that try to sell accounts in your  
territory, aren't there?

A. Yes, sir.

Q. Who are your principal competitors?

A. Such as McCleary, Clock, and well, Goodyear too,  
Firestone as far as that goes. And then there is a lot of  
jobbers such as National Tire, J. P. Burke, and then there  
is Foster, Miller and Bierly, they are sending men out,  
and then you see a lot of jobbers going out on the street,  
too.

Mr. Thompson: That is all. Thank you very much.

*Redirect Examination by Mr. Kelaher.*

Q. Mr. Lanza, on cross-examination you gave some ap-  
proximate percentages of your sales volume. You stated  
that approximately 80 percent of your volume was due to  
retreading?

A. Yes.

Q. And you gave a 20 percent figure. Would you state  
what that was?

A. Well, as far as new tires, I said the 20 percent figure,  
as far as selling, like people coming to the door, but of  
course, including the 20 percent as far as new tires and  
tubes and batteries, and who comes to the door.

Q. What part of that 20 percent would be wholesale,  
approximately?

(After pause.)

980 Q. On cross-examination I understood you to say  
that you sold very little in retail, is that correct?

A. Retail, yes.

Q. So the bulk of this 20 percent is wholesale?

A. Yes, as far as new tires and batteries.

Q. Now approximately what inventory stock, what is the value of inventory stock of new tires you keep on hand?

A. Well, I have run my inventory down because of the situation.

Q. What situation?

A. Right now it is out on the street.

Q. What do you mean? Will you explain that?

A. Well, the cheap tires now that is going out that makes it very difficult for recapping, and I have run my new tire sale down.

Q. If you know, what is your approximate inventory evaluation now?

A. I am just trying to figure. We did have a figure of \$6,000 but we ran that down and I would say about \$2,000.

Q. Does that include Goodyear?

A. I am including some of my camel back and all.

Q. Does that include Goodyear?

Mr. Thompson: Is that dollars or tires?

The Witness: Dollars, because I had run it way down. So I will be getting ready for my snow tires now.

By Mr. Kelaher:

981 Q. Does Mr. Glenn, the Goodyear TBA supplier you referred to, have recapping facilities on his premises?

A. No, sir. Not to my knowledge and I have known him for some time.

Q. Does Mr. George, the Goodyear TBA supplier you also mentioned, have recapping facilities?

A. I don't know, sir.

Q. Now you stated, in answer to a question on cross-examination, that—you made reference to "you boys" opening up a new recapping plant. What did you mean?

A. Goodyear down on Thompson Street, isn't it?

Q. This is Goodyear?

A. Yes.

Q. When did they open up that new plant?

A. I couldn't say the date.

Q. Was it in 1957 or 1956?

A. Before that. I couldn't tell you exactly. Goodyear could tell you.

Q. Has it been fairly recent?

Mr. Kelaher: Mr. Examiner, if there are any Goodyear gentlemen present, maybe they would supply us with the approximate date they opened up this Goodyear plant.

Mr. Correa: I am told that the plant has been here since 1952, but it has recently moved its location.

The Witness: That is right. There was one on 982 Ridley Avenue. Is that still in operation?

Mr. Correa: Now you are getting into details beyond me, I am afraid.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Correa: Mr. Kelaher, do you want to stipulate as to the information furnished off the record?

Mr. Kelaher: Yes, that would be all right.

Mr. Correa: Because it is the fact and there is no reason why it shouldn't be on the record.

It is stipulated then that the Ridge plant was closed last week and we moved into a new plant last week on Richmond.

984 By Mr. Kelaher:

Q. With reference to J. Ferrari, in Bethayres, Pennsylvania, Mr. Ferrari is an Atlantic station.

Mr. Kelaher: For the record, all of these names I am about to refer to are Atlantic service stations.

Mr. Thompson: You mean they are, or are you asking him whether they are?

Mr. Correa: He has testified they are.

Mr. Kelaheer: Yes.

985 By Mr. Kelaheer:

Q. Have you done any recapping business for Mr. Ferrari?

A. To be specific, three tires and that has been about four years ago.

Q. When you say three tires are you referring to three recaps?

A. That is right.

Q. So he has not been a regular customer of yours?

A. No, sir.

Q. You referred to a Mr. Kepp?

A. Yes.

Q. Was he at one time a regular customer of yours, on recapping?

A. Yes, sir.

Q. And when did he discontinue being a regular customer, approximately?

A. Approximately three years ago.

Q. With reference to Mr. Richard Kaiser, Abington, Pennsylvania, is he a regular customer of yours?

A. In recapping, yes.

Q. Recapping, that is.

A. Yes.

Q. And has he ever made any statement to you recently concerning recapping business?

A. As far as recapping?

986 Q. Yes.

A. No, sir.

Q. I refer you to Fred Philips, in Philadelphia. Is he a regular customer of yours?

A. In recapping.

Q. And has there been any decrease in the recapping business with that account?

A. The only decrease I see is like I said before, when the cheap new tires came out.

Q. I am talking about—I would like you to confine your answers to this statement you made with reference to the Goodyear plant.

Mr. Correa: I submit, your Honor, that is most unfair. The witness' answer was completely responsive and counsel doesn't apparently like it, but that is no basis for suggesting that it was unresponsive.

By Mr. Kelaher:

Q. I would like to ask you about William Barton, of Philadelphia. You stated that he was a regular customer of yours, but not recently, I think was the way you put it. Is that correct?—

A. As far as new tires are concerned.

Q. I am talking about recapping.

A. Well, like I say, since this cheap tire came out, my recapping has fell off.

987 Q. Did Mr. Barton ever make any statements to you with respect to shifting the recapping business?

A. Well, he has mentioned the fact that they might have to like give some recapping to Goodyear.

Q. And he was one of the dealers you have referred to as having made that remark?

A. Yes, sir.

Q. And your recapping business has decreased with Mr. Barton, isn't that correct?

A. No, the man was honest enough, he showed me a couple of tires he bought from Glenn, he said he bought a couple of tires off Glenn.

Q. Talking about recaps?

A. Yes, sir.

Mr. Kelaher: No further questions.

*Recross Examination by Mr. Correa.*

Q. Mr. Lanza, just one question. Fred Glenn has been offering recapping or retreading to Atlantic service stations, dealers, since at least 1952, isn't that correct?

A. Well, I guess he has.

Q. Don't you know that, sir, if you think back, cast your recollection back?

A. He has—let me put it this way: He has solicited recapping business.

988 Q. Since 1952 at least?

A. Well, what year I couldn't tell you.

Q. Well, as far back as you can remember, is that correct?

A. Even when I was on—there at McCollum and Elliott Street.

Q. So it would be pretty fair to say as far back as your business was, you can remember?

A. If you want to put it—I wouldn't say specifically just when.

Mr. Correa: I see. Nothing further.

Mr. Thompson: No further questions.

Hearing Examiner Kolb: Anything further?

Mr. Kelaher: No, your Honor.

Hearing Examiner Kolb: That is all, Mr. Lanza.

(Witness excused.)

Mr. Kelaher: I would like to call Mr. Hayes, please.



SHERMAN HAYES was thereupon called as a witness for the Commission and having been duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Kelaher.*

Q. Will you please state your name and home address?

A. Sherman Hayes, 9814 Woodfern Road, Philadelphia 15, Pennsylvania.

Mr. Hayes, at one time were you an employee of 989 Tri-State Distributors, Inc., 7th and Lehigh Streets, Philadelphia?

A. 17th and Lehigh, that is right.

Q. During what period were you an employee there?

A. From 1946 until 1955.

Q. And during part of that period were you an outside salesman for the firm?

A. That is correct.

Q. And what period was that?

A. From 1954—the end of '53 until 1955.

Q. Did Tri-State Distributors at that time sell TBA products?

A. Yes, they did.

Q. What products did they sell?

A. DuPont chemicals, Gates fan belts, Purolator oil filters, Champion spark plugs, Simoniz, Goodyear tires, and Armstrong tires.

Q. Batteries?

A. Exide and Gould National batteries.

Q. When you became an outside salesman, what was your sales territory?

A. Parts of eastern Montgomery and Bucks County.

Q. Do you recall whether there were Atlantic service stations in your trading area?

A. Yes, there were.

Q. Do you know approximately how many?

A. I would say well over 50. I never actually counted them.

990 Q. And did you at one time call on a Russell Tompkins, an Atlantic dealer located at Butler and Lindenwold, Ambler, Pennsylvania?

A. That is correct.

Q. And did you solicit TBA business from Mr. Tompkins?

A. Yes, I did.

Q. And were you able to sell him any TBA?

A. I—

Mr. Corbett: Has the date been fixed for this, may I inquire?

The Witness: 1954. I sold Russell Tompkins Exide batteries and DuPont Zerone and Zerex.

By Mr. Kelaher:

Q. And had Mr. Tompkins been buying any of those products prior to the time you became a salesman?

A. Yes, he had.

Q. And had he been buying Exide batteries prior to the time you took over the territory from your company?

A. Yes, he had.

Q. And did he continue to purchase Exide batteries from you?

A. No, he hadn't.

Q. If he gave you a reason, I would like you to state the reason, the approximate time, when it was given, and the location of the place where the conversation took place?

A. Well, it was in the Atlantic station at Butler Pike and Lindenwold Avenue in Ambler and the time was, 991 as close as I recall, late summer or early fall of 1954.

At the time I made the call at the station, I talked to Russ and his battery stock at that time was very depleted,

due to the hot weather and the sale of batteries at that particular time. And I talked to Russ about filling his battery merchandise with the batteries that he was turning over and the ones he would need. And he said, "I am sorry, but I can't buy Exide batteries." He said "I have had to place my order with the Goodyear TBA distributor for Goodyear batteries."

Q. Do you recall who was the Goodyear TBA distributor?

A. I believe it was Fred Glenn.

Q. And from that time on, were you unsuccessful in selling Exide batteries to him?

A. After that time I sold very few batteries to Russ Tompkins. It was a case of the consumer wanting an Exide battery and not a Goodyear battery.

Q. Then he might call on you for a battery?

A. That is right.

Q. Mr. Hayes, prior to the time you became an outside salesman for Tri-State Distributors, did you work in the—

A. I worked in the office and warehouse.

Q. In the warehouse?

A. That's right.

Q. And were you familiar with the inventory stock?

A. Yes, I was.

992 Q. And were you familiar with the records with respect to Exide batteries stock?

A. Well, I was in charge of the billing and so I did know where merchandise went.

By Mr. Kelaher:

Q. You stated, Mr. Hayes that you were with Tri-State Distributors a period of about 9 years. That would begin about 1946?

A. That is correct.

Q. Do you know, based on your own knowledge, what brand of batteries Atlantic stations were carrying at that time?

Mr. Correa: What time?

Mr. Kelaheer: The beginning of 1946.

The Witness: Based on my own knowledge, I would say it would either be Lee or Exide, probably Exide mostly.

993 By Mr. Kelaheer:

Q. Do you recall whether Atlantic stations began to carry other than Exide batteries at a later date?

A. At a later date?

Q. Yes.

A. Yes.

Q. What brand did they begin to carry?

A. Goodyear.

Mr. Kelaheer: No further questions.

994 Hearing Examiner Kolb: The hearing will come to order.

*Cross-Examination by Mr. Correa.*

Q. Now, sir, you were an outside salesman for about a year, is that right?

A. Almost two years.

Q. Almost two?

A. That is right.

Q. And you told us of a conversation you had with Mr. Russell Tompkins.

A. That is correct.

Q. And Mr. Tompkins did change over from Exide batteries to Goodyear batteries at or about that time?

A. That is right.

Q. And isn't the fact, sir, that the reason Mr. Tompkins changed over was because Goodyear has just come out with a dry charge battery?

A. That is correct.

Q. And he told you that, didn't he?

A. That is right.

Q. Now, sir, where are you presently employed?

A. Lanza's Tire Service.

Q. That is the Mr. Lanza who preceded you on the witness stand?

A. That is correct.

995 Q. Now, sir, you know who Fred Glenn is?

A. Yes, sir.

Q. Now are you familiar with the fact that Fred Glenn has a service station at one time?

A. I believe I know that he had a service station.

Q. Do you know that he gave it up and sold out to an employee of his?

A. I wasn't aware of that fact, no.

Q. Do you know that thereafter Mr. Lanza took over the recapping business of that station?

A. No, I didn't.

Q. You didn't know that?

A. No, I don't.

Mr. Correa: I have no further questions.

Hearing Examiner Kolb: Atlantic have any questions?

Mr. Ballard: No, sir.

Hearing Examiner Kolb: Any redirect?

*Redirect Examination by Mr. Kelaher.*

Q. Mr. Hayes, how frequently did you service Mr. Tompkins on Exide batteries?

A. I made it a practice of calling on the stations at least once a week.

Q. Did you replace old batteries or deteriorated batteries and so on, to keep them in fresh stock?

996 A. We rotated stock that was slow-moving and didn't turnover, yes.

Mr. Kelaher: No further questions.

Mr. Correa: Nothing further.

Hearing Examiner Kolb: You are excused, thank you.

(Witness excused.)

Mr. Dias: Mr. Colby, please.

WILLIAM COLBY was called as a witness on behalf of the Commission, and, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Dias.*

Q. Will you state your full name and business address?

A. William Colby, Harris and Leonard, 1301 West 9th Street, Chester, Pennsylvania.

Q. How long have you been employed by them?

A. Three years.

Q. In what capacity?

A. Salesman.

Q. For the entire three years?

A. Yes.

Q. And what is your sales territory?

A. Well, Hollyoak, Delaware, to West Philadelphia, 997 and Yeadon Chester Pike to Industrial Highway.

Q. What type accounts do you solicit?

A. Service stations, garages, new car dealers.

Q. Among the service stations are there any Atlantic stations in your territory?

A. Atlantic stations?

Q. Yes.

A. Yes.

Q. And can you tell us about how many there are?

A. Thirty or 35.

Q. And do you solicit any of those stations?



A. Twenty-three or so, 23 to 30.

Q. And how often do you call on them?

A. Two times a week.

Q. There are others in the territory then that you do not call on, is that correct?

A. Yes, there is a few I don't call on.

Q. Why is that?

A. Well, we never had too much success in calling on them and the territory is too big to fool with them.

Q. Have you called on them in the past, those remainders, above those that you call on regularly now?

(After pause.)

Q. You call on 23 now regularly?

A. That's right.

998 Q. The other 7, did you call on them regularly at one time?

A. When I first started I was calling on them pretty regularly.

Q. Of these 23 that you call on, do you sell them new tires?

A. Only on a fill-in basis, or what I mean by that is that if they need a tire for a specific job or something like that, I sell to them.

Q. And do you sell them batteries?

A. Very seldom.

Q. You attempt to sell them new tires and batteries, do you?

A. I have attempted to sell them new tires and batteries, yes.

Q. What are those stations advertising on or about their property in the line of TBA?

A. In my territory, well, in the Delaware territory it is Firestone, but in the Delaware County, it is Goodyear.

Q. Now, can you name some of your accounts for us, please, and tell us what you sell to them?

A. Well, there is Samuel Watson, Boothwyn, Pennsylvania; I sell him new tires. He owns his own station though, he does not lease it from the Atlantic Company.

Q. Does he buy on a stocking basis?

A. Yes, he does.

Q. How about recaps, do you have recap business with him?

A. Yes, he does.

Q. Can you name some others?

999 A. With recapping as the main thing, there is Gene DeFelice, of Ridley Park.

Q. Do you sell him any new tires?

A. I have sold him new tires, very seldom though. I mean, as I say, on a fill-in basis.

Q. Now each of these stations that you named, are these the stations that you call on twice a week?

A. Yes.

Q. Will you name another customer of yours, Atlantic station?

A. Earl Conners, of Chester.

Q. And what do you sell to Mr. Conners?

A. Well, I have sold him a few batteries, fill-in, where he needed them for a specific job; recapping; that is about it.

Q. Do you do recapping business with him regularly?

A. I do, yes. He doesn't do too much of it, but I think I do most of it.

Q. Have you tried to sell him new tires?

A. I try to sell them all new tires, but I mean I don't have too much luck with him.

Q. Can you name another account, Atlantic account?

A. Don Elko. That is in Sharon Hill. I do recapping with him.

Q. And how about batteries with Elko? Do you do any battery business with him?

A. No.

1000 Q. No new tires either?

A. No new tires or batteries.

Q. How long have you been doing recapping business with each of these that you have named so far?

A. Well, the first one, Watson, I have been doing that with him ever since I have been with the firm.

Conners, about a year and a half.

Elko, he has only been in business I would say about six to eight months, or maybe a little longer.

And DeFelice, for three years.

Q. Do you know who the Goodyear supplier is in that area?

A. Yes, Ed Parris, Edward Parris.

Q. And I believe you said you had an account or two in Delaware.

A. Yes.

Q. How about Parris, does Parris do any recapping?

A. Mr. Parris, he doesn't do his own recapping to my knowledge. I mean, he gets recapping for dealers, but he doesn't do it himself I don't think.

Q. Can you name another customer?

A. Wait a minute. Larry Conneen.

1001 Q. Spell that.

A. Conneen.

Q. Where is he located?

A. Crum Lynne.

Q. Is that in Pennsylvania?

A. Yes, Crum Lynne, Pennsylvania.

Q. What type business do you do with him?

A. Recapping mainly.

Q. Can you name another customer?

A. John Stockett, of Glenolden.

Q. What type business did you do with him?

A. Recapping, and I have sold him occasionally a new tire.

Q. On Conneen, can you tell us how long you have been selling to him.

A. Roughly two years.

Q. And Stockett?

A. About the same time, about two years.

Q. Can you name another account?

A. Clarence Nelson's Atlantic in Darby.

Q. And the type of business with that station?

A. That is again as a recapping business.

Q. Any more?

A. Frank Buckingham's Atlantic, of Chester.

Q. What type of business is that?

A. Recapping.

1002 Q. Any more? Can you name another one?

A. Frank Lancaster's Atlantic of Chester.

Q. Is that recapping?

A. That is recapping and used tires.

Q. Used tires?

A. Yes. And occasionally I have sold Frank a new tire.

Q. Do you sell him any on a stocking basis?

A. No, none of these are on a stocking basis.

Q. Can you name another account?

A. A station under the name of Harry and Jim's Atlantic, of Boothwyn.

Q. And what is it you sell to them?

A. Recapping.

Q. Have you ever sold him any batteries?

A. No.

Q. All right. Can you name another one?

A. Ed Stowe, Atlantic. About two years ago I have sold him a couple new ones, and I have sold him recapping, but it is not too big an account.

Q. Can you name another one?

A. John Rehill, of Chester. That is about the majority of them, the main accounts.

Q. I did forget to ask you about Nelson, how long have you been selling to him.

A. Three years.

1003 Q. Buckingham?

A. Three years.

Q. Frank's?

A. Lancaster?

Q. Yes.

A. About a year.

Q. Harry and Jim's?

A. About eight months.

Q. Ed Stowe?

A. Three years.

Q. And John Rehill?

A. Off and on about three years.

Q. Has your business remained about the same with them through the years?

A. In regards to recapping, yes, up until these Atlantic companies have come out with a third line Goodyear tire, which has definitely hurt the recapping sales.

Q. And when was that, approximately, do you recall?

A. I would say that happened around six to eight months ago.

Q. By the way, you handle U. S. Royal's, isn't that correct?

A. That is correct.

Q. Do you have a U.S. Royal tire that is in the same price category as this cheap Goodyear you mentioned?

A. Well, we do, but I mean it would not pay us  
1004 to sell it, there would be no profit in it.

Q. You have it though?

A. Yes, we could sell it to meet that price, but I mean

I would be making roughly 40 cents, and there is not too much sense in doing it.

Mr. Dias: That is all, your Honor.

*Cross-Examination by Mr. Thompson.*

Q. Mr. Colby, I represent the Atlantic Refining Company and this gentleman across the way, Goodyear.

A. Yes, sir.

Q. Are you the only Harris and Leonard salesman in the territory that you have described?

A. Well, in my territory, yes. We have another salesman that does the same job I do, and he takes from McDade to Westchester Pike.

Q. That is Mr. Kevis?

A. That is Mr. Drennen. Mr. Kevis is the commercial salesman.

Q. Your principal competitor is C. A. Powers, is it, not?

A. Yes, I would say he is the principal one.

Q. Is it not a fact that Parris and Leonard and C. A. Powers virtually divide the recapping business down in the Chester-Delaware County area?

A. Yes, I imagine it is about 60-40.

1005 Q. Did you get the 60—

A. I would say so.

Q. And that is most of the recapping business down in that area, isn't it, the two of you together?

A. Well, now, Superior Tire, they are in there a little bit, but the two principal ones are Harris and Powers.

Q. But you get much more of the business than C. A. Powers, don't you?

I would say so.

Q. Isn't it also true you sell virtually all the Atlantic accounts in your area?

A. Yes, I sell all the recapping.



Q. And recapping, of course, is the Harris and Leonard specialty?

A. That is our main business.

Mr. Thompson: I have no further questions.

Mr. Correa: I have no questions.

*Redirect Examination by Mr. Dias.*

Q. Just one question because the acoustics are bad.

Did you say you sold all the Atlantic stations all their recapping, or you sell all of them some recapping? Which is it?

A. Well, I mean it is hard to say what you sell a man. You don't know, but I would say 85 percent of the 1006 recapping is divided between Powers and Harris and Leonard, and I think I get the biggest amount of it.

Q. You do recapping then for all Atlantic stations, is that correct?

A. The ones I mentioned, yes.

Q. But you do not have it all in each of those stations?

A. No, that is pretty tough, to get it all.

Q. Are their other U. S. Royal distributors in your area, Mr. Colby?

A. No, not in that particular area there. The closest one I think would be Burke, I guess, in Philadelphia. He has come down in that area, but he is not too popular down there.

Q. Am I right in saying that Harris and Leonard is the sole U. S. Royal distributor in that area?

A. Yes.

Mr. Dias: That is all, your Honor.

Mr. Correa: No further questions.

Mr. Thompson: No further questions.

Hearing Examiner Kolb: That is all, Mr. Colby.

(Witness excused.)

Hearing Examiner Kolb: Any further witnesses this morning?

Mr. Kelaher: No further witnesses. I move we adjourn until 2:00 p.m.

Hearing Examiner Kolb: We will adjourn until 1007 2:00 o'clock.

(Thereupon, at 12:25 p.m., the hearing was adjourned, to reconvene at 2:00 o'clock p.m. this days.)

1008

Afternoon Session.

(2:10 p.m.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Dias: Mr. Ferguson, please.

RICHARD FERGUSON was called as a witness for the Commission and, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Dias.*

Q. Will you state your name and business address, please?

A. Richard Ferguson, 8 East Ninth Street, Auto Parts and Radiator, Chester, Pa.

Q. How long employed?

A. Four years.

Q. And in what capacity?

A. Salesman.

Q. Have you been a salesman for the entire four years?

A. Well, yes, four years and about four months; four months inside and four years on the road.

Q. And what is your sales territory?

A. Delaware County, part of Philadelphia,

Q. Is any of your territory in the State of Delaware?

A. None at all.

Q. What type business do you solicit, Mr. Ferguson?

1009 A. Auto repairing, chemical business, anything that has to do with automobile repair, gasoline engines and diesels.

Q. I mean, rather, the type of outlets or retail outlets that you call on. Do you call on service stations?

A. Service stations.

Q. Garages?

A. Garages; fleets; car dealers.

Q. You mentioned handling chemicals. What chemicals does your company handle, Mr. Ferguson?

A. Well, we handle Prestone chemicals, cooling system chemicals; waxes, Prestone waxes; polishes and car wash, Johnson's wax; Rust Master chemical products; Carb Master; almost any chemical they'd use in a service station or a garage.

Q. I am more interested now in knowing what all is in the Prestone chemical line. Is that more than just anti-freeze?

A. Oh, yes.

Q. Will you name the various items that are in the Prestone chemical line?

A. Well, there is Prestone anti-rust; Prestone 10-minute Flush; Prestone sealer, and Prestone prime, but it is just called prime, that is a gas line anti-freeze.

Q. Waxes and polishes, are they considered chemicals and in the Prestone line?

A. Yes. Prestone wax and there is a Prestone 1010 polish and Prestone car wash.

Q. In your sales territory, are there any Atlantic stations?

A. Oh, yes.

Q. And do you call on them?

A. Yes, I do. There are some I call on and some I do not call on.

Q. Well, how many are in your territory at all, can you tell us that?

A. Can I look at my notes here of my own?

Q. Yes.

A. There is about 15 of them in my territory, about 11 I call on, and the 11 I call on is only a few I call on steady; what I call steady is every week or every two weeks.

Q. How many do you call on steady?

A. Well, about seven of them steady.

Q. And the others that are in your territory, do you call on them periodically?

A. Once a month; once every two months.

Q. Have you ever called on them more often?

A. No, because I have a hard time selling them—I can only sell them hard parts.

Q. Of these stations that you do call on regularly, can you name them and tell us what it is that you sell to them?

A. Well, do you want me to give you the name of the station and tell you just what I sell to them?

1011 Q. If you can.

A. I can tell you if you want independents; I have a few independents included in that seven.

Q. What do you mean by independents?

A. Well, they own their own station; they are not lessees.

Q. Yes, include those.

A. Include those.

Well, I have first on the list here is Sandy's Cities Service; that is in Darby. If you would like to know the—

Q. Sandy's Cities Service?

A. Sandy's Service Stations; that is Atlantic, I am sorry, in Darby, and the only thing I can sell him is ignition

and brake lining and mufflers. That is all. He does stock my ignition.

Q. Sir?

A. He does stock my ignition.

Q. Is he an independent?

A. No. He is a lessee.

Q. All right.

A. I have John Stockett's Atlantic, in Glenolden. That is just ignition.

Now, Henry's Atlantic, Chester Pike in Norwood. That is an independent Atlantic station.

Mr. Ballard: I beg your pardon, I didn't get the name.

The Witness: Henry's Atlantic, at Chester Pike 1012 and McKinley Avenue, in Norwood. He is an independent Atlantic station, and I call on him regularly every week. He is a very good account. He buys practically all his chemicals from me plus all hard parts.

By Mr. Dias:

Q. All right, sir.

A. Minka Brothers, Atlantic, 6th and Morton, in Chester. They are an independent Atlantic station and a very good account of mine, and I sell them chemicals and hard parts. Between Chester Auto Parts and Auto Parts and Radiator we sell them all the chemicals.

Q. And did you say he was an independent?

A. Independent.

Q. M-i-n-k-a?

A. That's right. M-i-n-k-a, 6th and Morton.

Triangle, Atlantic, at Island and Suffolk Avenue, in Philadelphia, he is another independent Atlantic station, and I sell him Gates belts, hoses, a portion of his chemicals.

Q. Now these three stations that buy chemicals, which of your chemicals do they buy? Do they buy your Johnson's or your Prestone?

A. Henry's Atlantic buys Prestone chemicals; he is a very big—he sells a lot of waxes and he does sell Prestone wax.

Q. How about Minka?

A. Minka, they have Prestone and DuPont anti-1013 rust chemicals. They do have some DuPont.

Q. And Triangle?

A. Triangle, I sell them Rust Master chemicals and Prestone chemicals.

Q. All right, sir.

Now, there is another station or two. That is five so far.

A. I have another one I call on quite regularly, Bakers Atlantic, Chester Pike and Eddystone. He is a lessee, and that is hard parts and equipment business. No chemical business at all.

And the rest I have down here I can tell you the number of calls and how much business it is, how much business I have got out of them and it doesn't pay and if you want me to tell you, I can tell you that.

Q. Yes, I'd like to have that.

A. These are lessees. Branca's Atlantic in Yeadon. That is at Church Lane and Bailey Road in Yeadon; there is another operator in, Frank has only been there about a year, and in 1956 I called on him 20 times and done \$50.15 worth of business.

Q. How many times?

A. Twenty calls. That was all hard parts such as alemite hoses or something he needed for his grease equipment or muffler or tail pipe.

Q. What was your volume with him again? How 1014 many dollars worth of business?

A. \$50.15.

Q. Thank you.

A. DeFelice, Atlantic, at Chester Pike and Hinkson



Boulevard, Ridley Park; in 1955 I called on him 14 times and sold him \$171.19; my write-up business. That is no call-in business; that is repairs on jacks and such as that. No chemicals and very few hard parts there. 1956, 11 times and \$77.80.

I have Green's Atlantic at 204 East Fifth Street; 1956 I called on him 14 times and \$16.34 worth of business.

Then Larry's Atlantic, Chester Pike and Fair Glenn Road in Crum Lynne; 1955 called 11 times and received \$51.17 worth of business. Stopped calling on him only periodically; once every two or three months.

Q. What type of products?

A. Just Blue Streak ignitions and maybe a muffler or tail pipe.

Q. Of all of those stations that you named, Sandy's, John's, Stocketts, Henry's and so on, with the exception of Henry's, Minka and Triangle, do those stations carry TBA? Do they carry tires in those stations?

A. The independents or the lessees?

Q. All but the independents. What do the lessees carry?

A. The lessees, they carry Goodyear.

Q. Tires?

1015 A. Tires, batteries, accessories.

Q. And they advertise them about the station, do they?

A. Oh, yes.

Q. What about the three independtnts, do they all carry Goodyear TBA?

A. No, they don't.

Q. What does Henry's carry?

A. Henry handles Lee tires, Bowers batteries, they do handle Goodyear fan belts and Gates hoses.

Q. And how about Minka?

A. Minka, they also handle Lee tires; Lee batteries;

they do have some Goodyear batteries in there, too; Gates fan belts and Gates hoses.

Q. And Triangle?

A. Triangle, he doesn't stock tires. He buys them as he needs them and he will sell any kind that the customer wants. He is mostly in the repair business; batteries, he stocks some Delco and Gates fan belts and hoses.

Q. Since you have been on your territory have any new Atlantic stations opened in that territory?

A. Oh, yes.

Q. Have you called on them as soon as they have opened?

A. Well, I find it a losing proposition to call on Atlantic stations to try to get the equipment, because that is included right in the building.

1016 Q. Well, how about TBA products?

A. Well, there—that is all set up before I go there. I haven't even got a chance there.

Q. How about new operators of old stations where a station changes hands, have you ever called on them soon after they opened?

A. Yes, I have.

Q. Have you been able to sell any TBA in those stations?

A. None at all.

Q. Those new stations and where the stations have changed hands, what TBA do they carry?

A. Where they have changed hands?

Q. Yes. Where they've changed hands or in those instances where a new Atlantic station opens up, what TBA have you noticed in the stations?

A. Oh, Goodyear.

Q. Do you know who the Goodyear distributor is in your territory?

A. Ed Parris is a Goodyear distributor in my territory.

Q. How do your batteries, accessories, compare price and quality-wise with those of Parris?

A. Price is comparable, and quality, well, of course, I sell the Gates line, Delco batteries, I think I have a much better product to offer, a much better service to offer them.

Q. What type service do you offer?

1017 A. Well, if they were to need a battery, say in the morning, I could have it there in 20 minutes to a half hour or an hour at the most.

Q. And what is your brand battery?

A. Delco.

Mr. Dias: That is all, your Honor.

1018 Hearing Examiner Kolb: Any cross examination?

*Cross-Examination by Mr. Ballard.*

Q. Mr. Ferguson, how many accounts do you have all told?

A. It changes one month I might have 190, I take off and put on—I could be safe in saying 200.

Q. And do you call on the majority of them 15, 20 times a year?

A. No, I don't call on the majority of them. Some of them I call on once a week; my better accounts I call on once a week. There are a few I have to call on twice a week, some I call on every two weeks, every three weeks, once a month, and maybe once a year, just to get maybe an antifreeze order. And a lot of them I make phone calls to that I don't have to call on.

Q. You, of course, don't make a sale on every call, do you?

A. No.

Q. No salesman would do that, would he?

A. It's impossible to do that.

Q. When you mention a call, how long does a call take generally?

A. It depends, sometimes a call will take a half a day, sometimes it will—a normal call takes 20 minutes to half an hour.

Q. Sometimes you just stop in and pass the 1019—time of day with the fellow?

A. If he's busy I stop in and say hello and good-bye.

Q. A lot of other fellows call on your customers, too, don't they?

A. Oh, yes. There are quite a few salesmen.

Q. For instance, is that Henry's Atlantic Service that you told us about on Chester Road and McKinley Avenue?

A. A very good account.

Q. I think you said you sold him most of his accessories?

A. Well, I would say so. Yes, and all of his equipment.

Q. He does buy, however, from other suppliers, doesn't he?

A. I would say he does buy a little from Ed Parris, but he does do business with two other supply houses, three other supply houses that I know of besides myself.

Q. Which would they be?

A. Motor parts Service in Prospect Park, VJ Auto Parts in Sharon Hill and Philadelphia Wholesale, Philadelphia.

Q. Of Course, they sell him DuPont radiator chemicals, don't they?

Take Philadelphia Wholesale Distributors, they sell DuPont Radiator chemicals to him?

A. I don't know what they sell, but I last sold him Prestone chemicals and Rust Master.

Q. But you don't know whether they sell him radiator chemicals or not, do you?

1020 A. Well, I would say not because I don't recall seeing it on the shelf.

Q. How about Turtle wax?

A. Turtle wax, he buys that from Philadelphia Wholesale, I know that.

Q. Now, he gets his Wings oil from Delaware County Motor—

A. They are the only distributor of Wings Oil I know of.

Q. Does he have that on his shelf?

A. I couldn't say that for sure.

Q. Now, this Triangle Station that you mentioned is really a garage, isn't it?

A. That's right; it's an inspection station and repair shop.

Q. It has a pump or two outside?

A. It has three pumps.

Q. Three pumps. Does it have an island where you can drive in?

A. He has a big island, he does a big gas business down there; he does a lot of business with tractor trailers, he is mostly in the repair business though.

Q. Do you know how much business you are responsible for in a year? How much business do you write in a year?

A. What I write or the total?

Q. That you write.

1021 A. In a year?

Q. Yes, approximately.

A. I'll average between—about four thousand dollars a month. Some months I'll go over. This month I'm up to \$5,500.

Q. Has this been a good year?

A. Very Good.

Q. Better than last?

A. Better than last.

Q. And last year was better than the year before?

A. Oh, yes.

Q. Business has been improving?

A. Every year.

Q. I congratulate you.

Do you know what the company's business is in a year?

A. No, I have no idea what the company does.

Q. The company has been growing though, hasn't it? It's added new branches?

A. Yes, it has.

Q. What was the most recent branch, do you know?

A. We bought Tri-State Auto Parts, I think they were a subjobber of Auto Gear there in Marcus Hook. That's our branch. It's still called Tri-State Auto Parts, I think.

Q. But your company bought it?

1022 A. That's right, we bought it. It's in Marcus Hook.

Q. When did that take place?

A. I couldn't say. About six months. I couldn't say for sure. About six or eight months ago.

Q. Mr. Ferguson, do you call on Ed Holmes' Atlantic station?

A. I do not know.

Q. Well—

A. I did at one time, I haven't called on him in four years, three and a half years. I called on him for about the first three months I went out on the road.

Q. Why don't you call on him now?

A. Because we all have a set territory and another salesman from our company calls on him.

Q. I see.

A. That was only a temporary deal.

Q. How about Walter McCollough. Do you know him in Morton?

A. I don't call on Morton at all. No, that's another salesman's territory in our company. He calls on him, I imagine.

Q. Well, you do call on Chester Drozdowski?



A. That's Bakers Atlantic, Chester Poke, and Eddystone Avenue in Eddystone.

Q. Do you call on him?

A. I do.

1023 Q. Do you sell him Gates Radiator Hose?

A. I sold him a deal of Gates radiator hose at one time, this was when I first went on the road. We hung the racks and everything, put the hoses up and collected the money. The next week I went around, it was changed over to Goodyear, now there's three or four Gates' hoses mixed in with the Goodyear even today.

Q. That is fairly common in the industry, isn't it?

A. I would say so, in Atlantic stations.

Q. Only in Atlantic stations?

A. Usually when you set up an account with a good line such as we carry, Gates hoses or fanbelts or Blue Streak ignitions, it's very, very rarely that they ever, ever change over. If you take the proper care of them.

Q. You also sell him Fram and AC?

A. No.

Q. You don't?

A. No Fram or AC.

Q. You do sell him Auto parts and equipment?

A. I sell him his equipment.

Q. You don't sell him parts?

A. I sell him a few parts, not to many.

Q. Doesn't he buy Champion plugs from you?

A. I don't handle Fram and I don't handle Champion.

Q. I see.

1024 Mr. Ballard: No more questions.

By Mr. Correa:

Q. Mr. Ferguson, you said something about batteries, didn't you? Did you mention a battery you sold?

A. Delco batteries.

Q. That's right. I couldn't remember for a moment. Do you offer those batteries to service stations on 30, 60, 90 basis? That is payment one-third in 30 days; one-third in 60 days, one-third in 90 days?

A. Sure, I'll do better than that.

Q. I mean do you customarily? I'm just wondering what your practice is.

A. Yes.

Q. Do you offer them on any basis of a free battery if so many batteries are bought by the dealer?

A. Well, no; but we don't have any deal like that, so many free if you buy like 25 batteries, give them one free?

Q. Let's say 15.

A. I think if I took a deal like that to my boss I could get it through.

Q. Have you ever offered that deal is what I'm getting to?

A. No.

Q. Ed Parris does that, 15 batteries and one free battery.

A. I don't know.

Mr. Corréa: I have no further questions.

1025 By Mr. Dias:

Q. Mr. Ferguson, you have been selling for four years?

A. That's right.

Q. Can you recall back during your first year, second year and third year, and now your current year, was there ever any time when you were selling to more Atlantic stations than you are today?

A. Well, no; I don't bother too much with the Atlantic stations because of their TBA set up. I don't bother too much with them. I have a few that I call on that I get hard parts business out of. In other words, I won't call on an Atlantic station unless he's a hustler and he will do

repair work that I can get hard parts business out of him, an occasional jack or a wheel balancer, something like that. Equipment sale.

Q. But you have tried them all from time to time, have you, tried to sell them batteries and fill-ins?

A. I have tried to sell them. Yes.

Q. You were asked about Bakers, have you tried to sell Baker any filters?

A. I have never tried to sell Baker any filters.

Q. How about other accessories?

A. Oh, I've tried to sell him other accessories such as Rust Master chemicals and Prestone chemicals and never had any luck with it.

1026 Q. Did he give you any reason why he wouldn't buy them from you?

A. Well, he wouldn't buy them because he knows if he did buy them his distributor would certainly tell him about it.

Mr. Dias: That's all, your Honor.

Hearing Examiner Kolb: Any further questions?

Mr. Correa: Nothing further.

Mr. Ballard: No questions.

Hearing Examiner Kolb: That's all, Mr. Ferguson.

(Witness excused.)

Mr. Thompson: If your Honor please, when Mr. Balloron left the stand he was directed to return tomorrow morning for cross-examination. So far as Atlantic is concerned I have no questions that I want to ask Mr. Ballorone and if Goodyear—

Mr. Correa: (Interposing.) So far as Goodyear is concerned, your Honor; we have had opportunity since Mr. Balloron left the stand to read his testimony and we are content to rest on Mr. Kelaher's cross-examination of him.

Mr. Kelaher: Thank you.

Mr. Correa: As eliciting all the points we needed.

Mr. Kelaher: Coming from you that is a compliment.

Mr. Thompson: We thought that would permit Mr. Balloron—

Hearing Examiner Kolb: (Interposing.) Mr. Balloron will then be released and will you notify him?

Mr. Kelaher: We will notify him.

Mr. Thompson: That will permit him to spend tomorrow morning with his old friend Senator Pepper.

Mr. Kelaher: That's right. He's a good friend to have, I may add.

Mr. Dias: I call Mr. Walker, please.

GEORGE STANLEY DREW WALKER, was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Dias.*

Q. Will you state your name and business address?

A. George Stanley Drew Walker of Suburban Auto Parts, 221 West Lancaster Avenue, Ardmore, Pennsylvania.

Q. And could you tell us how long you have been employed by Suburban Auto Parts?

A. Just four and a half years.

Q. Will you describe or tell us a little about Suburban Auto Parts, is that an independent Company?

A. Well, it's registered as an independent corporation and it's wholly owned by the owners of the A. P. Rotzell Company.

Q. It is considered to be a branch of Rotzell, actually?

A. Well, it's registered as a separate corporation, 1028 but we buy principally through Rotzell.

Q. Do you handle the same—

A. Yes, we handle all the same products that Rotzell handles.

Q. And what is your sales territory? How are you employed, you are a salesman, are you not?

A. I'm a salesman employed on commission.

Q. What is your sales territory?

A. Well, I operate west of City Line and between the Schuylkill River and West Chester, Pennsylvania.

Q. Will you tell us the type of customer that you solicit?

A. Well, independent garages, service stations, car dealers and some fleets.

Q. Did you say service stations?

A. Service stations, yes.

Q. Among the service stations are there any Atlantic stations?

A. There are a number of Atlantic stations in the territory, I don't go into all of them.

Q. Can you tell us approximately how many there are?

A. Well, there's from, oh, between 12 and 20, I imagine in that territory.

Q. How many do you call on, Mr. Walker?

A. Well, I call on about eight of them fairly regularly and the others I stop in once in a while.

Q. And how often is regularly?

1029 A. Well, about six of them once a week and the others maybe once a month.

Q. And those other four?

A. The other four, would be anything special comes up of interest I stop in there.

Q. The six that you call on regularly, can you tell us what products you sell to them? Can you name those stations?

A. Well, I sell mostly parts that they need in the repair business, mufflers, shock absorbers, if they need an odd battery that they don't stock in a hurry, we give them

that. In other words, if we give them better service where they'd lost a customer, we do that.

Q. Who is their regular supplier?

A. Ernest Miller of Upper Darby.

Q. What products does he supply?

A. Mostly Goodyear tires and batteries, DuPont chemicals and one or two others, I don't know his full line.

Q. These Atlantic stations in your territory, do they advertise TBA products about their stations?

A. Well, they have been on display on their shelves and they use the regular window streamers and that sort of thing.

Q. What products do they advertise?

A. They all have the full line of DuPont chemicals and the lessee stations have Goodyear tires and batteries, some of the independents have other brands.

1030 Q. How many independents are in your territory?

A. Well, there's either two or three. There's one out the end of this week and there's one, I think that went back under company control, so there are really only about two completely independent.

Q. How do you define "independent"?

A. Well, where the fellow has complete control over the real estate where he operates.

Q. And what do they advertise? What do those independents advertise?

A. Well, I think the two that are operating now have got Lee tires and one has got Lee batteries. The other has Willard batteries and then they have a variety of accessories. They carry the DuPont line.

Q. Would you care to name those two stations for us?

A. Lou Dorn in Broomall and there's Wynnewood Park Service Station on Haverford Road in Wynnewood. The other one is in Garrett Road, he's going out of business in another week, he's turning it over to another oil company, not Atlantic.



Q. These lessees in your territory, do you attempt to sell them batteries, your batteries?

A. Only we let them know that we have batteries and when they need them they can call.

1032 By Mr. Dias:

Q. Sir, let me ask you. Did they give you a reason?

A. Yes.

Q. Now, who was it gave you a reason? Which particular station operator, can you name him?

A. Jim Daley out in Kenwood.

1033 Q. And when did he make this statement to you?

A. The early part of this year.

Q. And what reason did he give you for not buying the batteries?

A. Because there was a possibility he might move from that station or Atlantic might give up the location and then he'd be stuck with them.

Q. Were there other similar statements by other dealers made to you?

A. Well, there's—

Mr. Correa: I object to that question, if your Honor please, "were other similar statements made to you by other dealers?"

Mr. Dias: I don't know how I can find out whether or not there were—

Hearing Examiner Kolb: I think that question is all right. He may answer yes or not to that.

Mr. Dias: You may answer yes or no, Mr. Walker.

The Witness: Yes.

By Mr. Dias:

Q. Now, will you tell us when and by whom and the substance of the statements?

A. Well, we always get the statement, whether it's a brush off is like the fellow who says, "Well, I'll keep you in mind." "Well, you know I can't handle your products because I have to handle the others."

1034 Q. I'm asking you for a specific statement by a specific operator. Can you recall any other Atlantic operator that made this specific statement to you?

A. I can recall some years ago when Al Godino was operating the station on Belmont Avenue in Belmont Hills saying he couldn't buy accessories from us even if he could get them cheaper.

Q. And did he tell you why he couldn't buy them from you?

A. Because he said that his contract with Atlantic, he'd have to get these accessories through their approved source.

Mr. Ballard: I now move to strike the last answer, your Honor, unless we know when some years ago is.

The Witness: Early part of '53.

By Mr. Dias:

Q. Did you say "several years"?

A. In the early part of '53 when I first started on the job.

Q. When in '53?

A. The early part of '53.

Q. You gave us his name?

A. Al Godino.

Mr. Dias: Off the record.

Hearing Examiner: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

1035 Mr. Ballard: I withdraw the motion to strike, your Honor, in order to straighten out the record.

By Mr. Dias:

Q. Mr. Walker, I may have asked you this, but if so I have forgotten.

Do you know who the Goodyear supplier is in your territory?

A. Yes. Ernest Miller of Upper Darby.

Mr. Dias: That's all, your Honor.

Hearing Examiner Kolb: Cross-examine.

*Cross-Examination by Mr. Ballard.*

Q. Mr. Walker, you, of course, also call on Korbo,

A. Korbo, trading as Korbo Brothers Atlantic Station?

A. No.

Q. You don't call on them?

A. No.

Q. Do you call on J. Gill at—

A. Occasionally, yes.

Q. And do you sell anything to Mr. Gill?

A. Not recently, no.

Q. Did you used to sell him anything?

A. We sold him a little but he has a brother-in-law working for a competitive house and so he gives the business to the family.

1036 Q. What house was that?

A. In Auto Gear and Radiator I think they call themselves in Chester.

Q. Are they big competitors of yours?

A. Not too much, but they come in on some products in some parts of the territory.

Q. How about Henry Matus at Haverford Road and Bryn Mawr?

A. Occasionally.

Q. What do you sell him?

A. Nothing lately. Some mufflers at one time.

Q. You don't sell him any chemicals?

A. No.

Q. Why doesn't he buy chemicals from you?

A. I haven't been calling on him too regularly, he hasn't been in there too long. I called on his predecessor.

Q. Did he ever give you any reason for not buying the chemicals?

A. No, he hasn't.

Q. Do you happen to know whether he's a lessee station or not?

A. I don't believe Atlantic owns that property.

Q. You don't think so?

A. And I don't know the terms of his lease.

Q. And now how about J. J. Ryan, do you go out as far as Radnor?

1037 A. Yes, I see Ryan once in a while, but I wouldn't classify Ryan as a service station; it's a grocery store.

Q. Do you sell him chemicals?

A. Once in a while.

Q. How about Davis Brothers in Bryn Mawr?

A. Well, Davis Brothers, at least they have got a garage there, but they hardly do any work in there at all.

Q. Do you sell them anything?

A. No, they don't use any of our parts.

Q. Do you call on them?

A. Once in a while just to say hellow. They don't do any business, it's just a store and garage.

Q. How about DeMar Company at—

A. That's Wynnewood Park Service Station?

Q. That's right.

A. I call on them.

Q. Do you sell them anything?

A. Chemicals occasionally and parts for his inspection station.

Q. Hard parts that is?

A. Yes.

Q. Did you ever sell him any batteries?

A. No. Well, if he's stuck for them once in a while, it's Willard batteries and he buys them from a jobber.

Q. How about Mr. Gill on Darby Road?

1038 A. I said I used to call on him. He's the one that has a relation in the business.

Q. That's right. Excuse me.

• And the number of customers that you carry all told?

A. About 200.

Mr. Ballard: I have no further questions.

By Mr. Correa:

Q. Do you sell batteries, sir?

A. Yes.

Q. What kind? Perhaps you said but if you did I'm afraid I missed it.

A. Delco.

Q. And you offer batteries to sell to service stations?

A. Yes.

Q. Including Atlantic Service Stations?

Have you ever offered Delco batteries on the basis of one free battery with every 15?

A. No. Those batteries sell for the same price whether they go to a General Motors dealer or service station.

Q. So you don't make any offer?

A. We don't make any price concession to anybody.

Q. Now, does Mr. Ernest Miller offer batteries for sale, Goodyear batteries on the basis of 1 free with every 15 that the service station buys?

A. I don't know his price structure at all.

1039 Q. You don't know that?

A. I don't know what he does.

Mr. Correa: No further questions. Thank you.

Mr. Dias: That's all, sir.

Hearing Examiner Kolb: Is that all?

Mr. Dias: That's all.

Hearing Examiner Kolb: That's all, Mr. Walker.

(Witness excused.)

Hearing Examiner Kolb: We will take a five minute recess.

(Whereupon, a short recess was taken.)

1040 Hearing Examiner Kolb: Come to order.

Mr. Kelaher: Mr. Examiner, we are now going to get back to Commission Exhibit for identification 101-A through Z-20. This is identified in the record at page 22, and I quote, "Document entitled 'TBA Study,' dated May, 1949, Sales Research Section, the Atlantic Refining Company."

At the hearing on March 7, 1957, at the beginning of page 73, this document was offered into evidence. At that time objections were raised by counsel for both respondents, and considerable discussion ensued, which carries through page 83 of the transcript. On page 83 of the transcript the offer was withdrawn tentatively as a result of your Honor's suggestion that a witness be called who would be qualified to discuss the document itself.

Since that time respondent Atlantic has furnished us with the name of J. L. McIntire, and at this time I would like to call him to the stand.



JAMES L. McINTIRE was called as a witness for the Commission and, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Kelaher.*

Q. Will you please state your name and home address?

A. Home Address?

1041 Q. Yes.

A. J. L. McIntire; 2258 North 53rd Street, Philadelphia.

Q. What is your first name?

A. James.

Q. And are you presently employed with Atlantic Refining Company?

A. Yes, sir, I am.

Q. And for how many years have you been employed with them?

A. Twenty-one.

Q. And at one time were you in the Sales Research Section of Atlantic Refining Company?

A. Yes, sir. I was.

Q. During what period?

A. Well, it ended in 1950, at the Korean War. I think it started about 1948, late '47 or early '48.

Q. And what were your duties in the Sales Research Section?

A. I was the manager of it.

Q. And what would the duties of the manager involve or entail?

Q. We would make studies in the market as we were requested by the sales managers, if they had a problem on which they wanted an analysis of the market or a consumer survey or dealer survey, then we would make it.

Q. Did you have training to make such studies?

A. No, sir, I am afraid not, except as I had acquired it by trial and error.

Q. Did you have prior experience in the field?

A. Yes. I had been a salesman before the war and then after the war I had worked for the Assistant General Manager of Sales, as a sort of a field investigator for him. That was the thing that eventually materialized into a formal Sales Research or Sales—I think we called it Sales Research Section.

Q. What has become—when did that become officially known as the Sales Research Section?

A. About 1948.

Q. Were you in charge of the Section?

A. Yes, I was the first person in charge.

Q. And just to—this may be repeating, but to clarify your duties, you did make surveys of various types for management, is that correct?

A. That is correct, yes, sir.

Q. And what type of surveys did you prepare?

A. Well, I will have to try to remember. Let's see, some surveys of course you had to employ outside interest just to make. Some surveys we made with our own personnel. We had four or five people in that section. We made such surveys as trying to evaluate the desirability of this prospective service station site versus this one. We ran what we called market studies to find out what percentage of the market the various brands of gasoline 1043 enjoyed in that particular market. We did a study connected with what the consumer wanted in his service station. In other words, did they want their windshield wiped, or didn't they, and things like that. There were quite a few. I can't remember them all, but that gives, I think, some idea.

Q. I now show you Commission Exhibit 101-A through Z-20 and ask you to state what it is?

A. That is the so-called TBA study that we made. This is May, 1949.

Q. Now were you in charge of this particular study?

A. Yes, sir, I was.

Q. Now would you please state what methods were used in preparing this study?

A. Well, I guess the method would be called a somewhat modified depth interview. We arranged through an outside firm, Stewart Dougall and Associates, to furnish interviews. I don't remember how many cities, but I suppose it is in here, and then one of the junior partners of Stewart Dougall and myself designed this questionnaire and Stewart Dougall's interviewers took it around and filled in the answers.

Q. So you and the associate designed the questionnaire upon which that survey is based?

A. Yes.

Q. Now on the first page of that, that would be Commission Exhibit for identification 101-B. I would like you to read the first paragraph there.

1044 A. "This study represents the opinions and the attitudes of 1,071 dealers in 47 cities from Massachusetts to Florida. These dealers were chosen on a random basis within the following limits."

Do you want the rest?

Q. Is this a correct statement?

A. Yes, sir.

"(1), a quota for each brand based on that brand's acceptance in the city.

"(2) Satisfy the definition of a promotable dealer."

Do you want me to read the rest?

Q. That will be sufficient.

Are any of the basic records still available which form the basis for this document 101-A to 101-Z-20?

A. I would say 85 percent of them seem to have dis-

appeared. Here and there a copy of the report and a couple of questionnaires, which are only a very small part of the whole. I even ascertained that the records of the company in New York were destroyed. They keep them four or five years, but this goes back some years. There is no complete data available.

Q. However, there are reports available, are there not?

A. Yes, sir, such as this one.

Q. I am talking about basic source data now.

A. There are one or two folders of basic source data.

Mr. Kelaher: Your Honor, at this time I would like to refer to a stipulation entered into with counsel for the respondent Atlantic and refer to page 318 of the transcript. In reference to a question as to whether or not—in response to a question concerning Commission Exhibit for identification 101-A through Z-20, the question was, "Origin and so forth, is basic data available?" "Answer. Reports are available for interviews believed to have been conducted in Boston, Massachusetts, Fall River, Massachusetts, Johnstown, Pennsylvania, Philadelphia, Pennsylvania, Pittsburgh, Pennsylvania, and Trenton, New Jersey."

Is that correct, Mr. McIntire?

The Witness: Yes, sir.

By Mr. Kelaher:

Q. Mr. McIntire, the reports available would show the questionnaire form that was used to prepare this summary, isn't that correct?

A. Oh, yes, sir.

Mr. Kelaher: Your Honor, at this time I offer Commission Exhibit 101-A through Z-20 into evidence (handing document to Examiner).

Mr. Ballard: Would you care to hear the respondents now, sir, or would you like to read it?

Hearing Examiner Kolb: Let me see what it says.

Mr. Ballard: Your Honor, with regard to this document, the first problem I have is the purpose for which 1046 it is offered.

As your Honor can see, it is a tabulation, under a number of headings, and I would like to find out if I could whether it is offered to prove that the dealers said the answers attributed to them, that that is their attitude, is it state of mind testimony, and if so, the dealers of course are not identified. When we know what the purpose of the offer is, your Honor, I would like to reserve the right to question this witness on voir dire in order to elucidate some points which I think have not been brought out about the nature of this study and the reliability of the information that is presented.

Mr. Mason: If your Honor please, we feel that this document is wholly irrelevant, so far as Goodyear is concerned. In the first place, it antedates any time that there was a sales commission arrangement between Goodyear and Atlantic.

Furthermore, it is in the nature of opinion evidence and it should be fully qualified by a detailed exposition of the techniques by which the document was prepared.

Mr. Kelaher: Mr. Examiner, we argued this at length on March 7, but I would like to call several important facts to your attention for your consideration. This was prepared in 1949—

Hearing Examiner Kolb: Let me see that transcript a minute please.

1047 (Document handed to Examiner.)

Hearing Examiner Kolb: I believe the purpose is stated in the record at the bottom of page 75.

Mr. Ballard: Mr. Kelaher, could I look at that record?

Your Honor, with respect to the statement at the bottom of page 75 of the record, to which you have directed our

attention, that statement is a statement by Mr. Kelaher, which reads as follows: "Your Honor, we are offering this with respect to respondent Atlantic to show you the research engaged in by respondent Atlantic in determining which marketing alternative it would adopt."

Your Honor, I am not certain what that language means. We, of course, admit and will be glad to stipulate, what research was done. In fact, the witness testified without objection as to the research that was made and if that is all Mr. Kelaher wishes, I don't see that the report itself adds anything to it. If by this language he wishes to bring in the substance of the report and not merely the fact that the research was done and the report was rendered, then we must object to it, your Honor.

And I again ask for an opportunity to question the witness before your Honor rules on admissibility.

Mr. Kelaher: Your Honor, just so there will be no misunderstanding about it, it would be sort of ridiculous 1048 to offer the survey if I just wanted to show it was made. I am offering the survey as proof of the facts stated therein. Its trustworthiness has been established; it was prepared by the Manager of the Sales Research Section of the Atlantic Refining Company. He has testified as to the sound procedures used. It reflects the preference of Atlantic dealers for TBA at that time, and I would like to call your Honor's attention to Commission Exhibit 136-A through D. This is an inter-office letter from Mr. S. J. Heidman, who at that time was Atlantic's manager of TBA sales, to D. T. Colley of Atlantic, who was and is Vice President of that company, and the subject matter is: "TBA conversion to Firestone and Goodyear programs," and it is stated right in the letter all the steps that were taken before Atlantic decided to convert to the Firestone and Goodyear TBA programs. And among such



steps I would like to read you a paragraph, the second full paragraph of 136-B.

"Having established the fact that our TBA program was somewhat unique among oil companies, we then employed an outside agency to sample opinions of both Atlantic dealers and competitive dealers in our area. The important finding from this survey was that our present program was far from flawless and that there was a great deal of dissatisfaction with it among our dealers. The dealers of other marketers appeared more content with the TBA programs that were available to them."

It is very clear, your Honor, that Atlantic placed 1049 great emphasis on this report. We think we are entitled to have that report in the record. It certainly is an important factor in this case. It is relevant; it is material; it is competent. And we think that we now have the witness here; counsel for either respondent has him available for cross-examination, and we see no reason why it shouldn't be admitted.

Mr. Mason: If your Honor please, I think this document is wholly inadmissible as to Goodyear. A minimum requirement to qualify such a document which purports to be a survey, is that the basic material be available, and here the witness says that it is unavailable. So that so far as we are concerned, we have no way of checking the authenticity and soundness of the procedures by which this document was arrived at.

Mr. Ballard: Your Honor, one point.

Mr. Kelaher, may I see that exhibit again?

(Document handed to counsel.)

Mr. Ballard: If this document is being offered in substantiation of the statements Mr. Kelaher read, which were to show that the present program was far from flawless and there was a great deal of dissatisfaction with it among Atlantic dealers, by the present program they

meant, of course, the program in 1949, then while it is cumulative evidence, we would not object to it, if that is what Mr. Kelaher says it shows.

1050 I might point out that as a perfectly good example of the fact that this document is an ambiguous one, those statements are somewhat difficult to reconcile with the statements on the face of the document itself. It appears that each person who reads this document can draw different conclusions from it, and I submit, your Honor, that it is not reliable evidence of the facts stated therein.

Mr. Kelaher: Now, your Honor, it was considered reliable evidence by Atlantic Refining Company when it converted to the Goodyear TBA program, and I think the record also shows they began this exploration of marketing alternatives prior to 1949.

Mr. Ballard: Will you stipulate with me that this document shows that Atlantic dealers were far from satisfied and that the program they were then using was far from flawless?

Mr. Kelaher: I am offering the document in evidence to speak for itself. You ask me to stipulate to something which is meaningless when we have the survey here.

Mr. Mason: Are you limiting your offer to Atlantic?

Mr. Kelaher: I am not.

Mr. Mason: Obviously the considerations of Goodyear are quite different from anything Mr. Kelaher mentioned.

Hearing Examiner Kolb: It looks to me as though the survey is exact and has been properly taken. If the 1051 underlying data is not available, it would seem to me that it would be competent to go in after cross examination of the witness. Atlantic had the survey made, they apparently had at one time these documents available; they know what it is all about, and I can't see how Atlantic can make an objection to it on the basis of the underlying data not being available.

Mr. Ballard: If your Honor please, if your feelings are as expressed, then I would like an opportunity to examine this witness in the matter of Voir Dire, before you finally rule.

Hearing Examiner Kolb: Yes, I intended to do that. I was just making those remarks as to my reaction at the present time. I am not ruling on the question. You may proceed.

Mr. Mason: Is your Honor ruling on the Goodyear objection?

Hearing Examiner Kolb: I don't know yet how much of the data is available.

Mr. Mason: I submit it is plain it hasn't been qualified yet.

Hearing Examiner Kolb: He said he has the data available for various localities.

Mr. Mason: Yes, but on the face of the document it says it covers the entire Atlantic marketing area 1051A and it has been testified that only a portion of the data exists and the witness testified that the records of the company making the survey have been destroyed and about 85 percent of the underlying material has been destroyed. Now that means that the data is not available for checking by Goodyear.

1052      *Voir Dire Examination by Mr. Ballard.*

Q. Mr. McIntire, with respect to this study, Commission's exhibit 101-A through Z-20, do you have in your file a copy of the questionnaire that was used in preparing this study?

A. Yes, sir.

Q. May I see that, please?

A. Yes, sir. (Handing.)

Mr. Ballard: I ask that the reporter mark this document as Respondent's exhibit A-5 for identification.

(The document referred to was marked Respondent's exhibit A-5 for identification )

By Mr. Ballard:

Q. Now I refer you, sir, to the first page of this questionnaire, and ask you if those are the questions that were used in deciding whether the particular service station was a promotable dealer?

A. Some were. The one that says, "Lubrication facilities," this was designed to screen out stations that the interviewers might erroneously include.

We had told them, evidently, from the front of this—I am sorry, the instructions aren't available—we wanted to get promotable dealers and one definition would be that he could provide lubrication facilities. So if the questionnaire had come in with no lubrication facilities, it 1053 would have been thrown out as a non-promotable dealer. The checking of the lubrication facilities is a sort of a check on the data here. Similarly, stations doing under 10,000 gallons of gasoline a year obviously is not what the oil company would call a promotable station, therefore we weren't particularly interested in their attitudes or opinions.

Q. Now if a man checked "yes" on lubrication facilities and showed over 10,000 gallons of gasoline a year, you would accept him as a promotable dealer, regardless of whether he owned the station or leased the station. Is that right?

A. Oh, yes; well, I am not sure whether it was 10,000 or 25,000 that we used as our final break on promotable, but the substance of your question—it didn't make any difference whether he owned or leased the station.

Q. Did it make any difference, if he leased it, whether he leased it from the oil company, from a distributor, or some other landlord?

A. Not a bit.

Q. You accepted all of those?

A. Yes. As far as defining a promotable dealer.

Q. And did it make any difference whether he purchased—I am now on this questionnaire—purchased from the oil company who owned the brand name, through a distributor, from an agent, from a wholesale dealer, or some other source?

A. No. That may sound confusing, but when we 1054 originally planned this survey, we had hoped to spend considerably more money and have a much much bigger sample, in which case we could have controlled all these various breaks and cross sample their answers, but we didn't have that, so a lot of this was never usable.

Q. So when this survey refers to petroleum supplier, that could mean the oil company?

A. Yes, sir.

Q. It could mean a distributor?

A. Yes, sir.

Q. It could mean an agent?

A. Yes, sir.

Q. It could mean a wholesale dealer?

A. Surely.

Q. And if there are any other sources, it could mean those?

A. Anybody who supplied them with petroleum products.

Q. Now, turning for a moment to—

Hearing Examiner Kolb: (Interposing.) Before you get away from that, if a man answered no on lubrication, but did purchase more than 10,000 gallons of gas, was that thrown out?

The Witness: I didn't understand you, sir.

Hearing Examiner Kolb: You were telling about lubricating facilities. Where the party would answer no, as to

having lubricating facilities, but does purchase more 1055 than 10,000 gallons of gasoline, would that be used?

The Witness: He would not be considered a promotable dealer.

Hearing Examiner Kolb: Regardless of the amount of gasoline he might use?

The Witness: Yes, sir.

By Mr. Ballard:

Q. Now, Mr. McIntire, there were instructions that went along with this questionnaire?

A. Yes there were instructions that went along with it.

Q. Were they written instructions?

A. They were written instructions, written and prepared by Stewart Dougall in conjunction with myself, because the interviewers were employees of Stewart Dougall.

Q. Did you search your files for copies of those instructions?

A. Yes. See, when I left, first of all remember I left the department and I think it has had three different managers since I left, and each one keeps different files and different systems, so what I did was contact the new present manager who assured me he had searched his files and there is no data relative to this survey there.

Q. Were the interviewers given oral instructions as well?

A. No, sir.

Q. They were given written instructions and the questionnaires?

A. That is correct.

1056 Q. Now turning to question 1 on page 1 of the report itself, that is, Commission's exhibit 101-C, you see at the top of the page a question which is in the form of a question.



Was that the question the interviewers were supposed to ask the station operator? Were those the words that they were supposed to use in asking the station operator the question?

A. No, sir.

Q. According to the questionnaire, what were those words?

Hearing Examiner Kolb: I thought this document was the questionnaire.

Mr. Ballard: The fact is that in preparing the report, that is to say—I don't want to make more of a mystery than this is—in preparing the report they used the form of questions, but those are not the questions that appear on the questionnaire. So in each case, you have to go back to the questionnaire and see what the question was, to find out the purport of the answers.

It is made even more difficult by the fact that they didn't follow the same numbering.

What I am trying to ask him is that the question which appears as question 1 of the report itself, the actual Commission exhibit, is not the same as the question which appears on the questionnaire.

I wanted to call that to your Honor's attention.

Mr. Kelaher: If I am looking at the same thing, 1057 Mr. Ballard is looking at, I can't see any great difference.

Mr. Ballard: Your Honor, the differences may not appear great in all cases. I think, as you progress, there may be some that are of more importance. But I want to call the witness' attention to the introductory remark, which the interviewer was supposed to make.

The Witness: The interviewer would read all of this and there was a multiple choice of three and a reason, so that multiple choice 1 was matched with its reason as 1, and the next multiple choice with its reasons, as 2, and

the further along you go, the more the spread between correlating questions and answers, but this was only prepared for our internal use, and therefore at the time it didn't appear very important. It appears rather important at this point, if you are trying to understand it, but it didn't eight years ago.

By Mr. Ballard:

Q. Now you asked the dealer this question: you asked the station operator—at least you hoped your investigators asked the station operator this question: “Assume for the moment that you did not carry a line of tires, batteries and accessories and you were just about to put in a line of such merchandise. Under such circumstances, do you think you would prefer to buy all your major TBA items from one source or from several sources?”

A. That is right.

1058 Q. The operator was then given an opportunity to check “one”, “several”, or “Don't know.” Then the investigator was supposed to ask for answers to this question: “Why?” and those I take it were free answers?

A. That is correct.

Q. In other words, no answer was suggested to the operator there?

A. No, sir. They couldn't, because you were using women interviewers, who wouldn't have the faintest—at least I am sure the majority of them wouldn't—have any knowledge about such things.

Hearing Examiner Kolb: Where is your last question transferred into your survey?

Mr. Ballard: I am coming to that. The answers to the “Why?” question appear I believe—I hope your Honor will pardon a certain amount of leading—but I believe they appear do they not on page 2?

The Witness: No, they appear—

By Mr. Ballard:

Q. The answer to the "Why" question.

A. Oh, yes, they appear on 2 and 3.

Q. Pages 2 and 3 of the report itself, is that right?

A. Yes.

Q. And 2 is Commission's exhibit 101-D and 3 is 101-E?

A. That is a continuation of the same thing. May I explain?

1059 Mr. Ballard: Please do.

Mr. Kelaher: I think it might be helpful to let the witness explain this.

The Witness: This question was posed, just as Mr. Ballard said. I pose this question to this gentleman here and he says "one source." You check "one source," and you say "Why?". And he writes it in. The interviewer writes in what he says.

Now he would appear on page 1, under the caption "Prefer one source for TBA," but his "Why" would appear on page 2, under the caption "why do you prefer one source for your TBA (asked only of those making this preference in question 1).

Now the next gentleman says "Several." He would also appear on page 1, but down under the "Prefer several," but his "why" would appear over here on page 4 under the caption, Question 2(b), "Why do you prefer several sources? (asked only of those making this preference in 1).

Do you follow me?

Mr. Kelaher: That is very clear.

By Mr. Ballard:

Q. Now, Mr. McIntire, turning to page 2 of the report, Exhibit 101-D, this page purports to give the answers as to why those who preferred one source had that preference.

A. That is correct.

1060 Q. Now for instance the second column there headed "2" says "Price." I take it that you classified the various answers into these categories, is that right?

A. That is correct.

Q. If the man said—mentioned price protection, where would that be?

A. That would be in "Price."

Q. If he mentioned "long margin," where would that be?

A. "Price."

Q. If he mentioned "low price to the consumer"?

A. "Price."

Q. If he mentioned "quantity discounts," where would that be?

A. That would be "price."

Q. Now if he mentioned "guarantee by the supplier," where would that be?

A. That would be "guarantee."

Q. Suppose he mentioned guarantee by the manufacturer of the tires?

A. That would still be under "guarantee."

Q. I suppose it would be a variety of reasons that might be catalogued under "service," is that right?

A. Oh—

Mr. Kelaher: Objection, your Honor. I can appreciate Mr. Ballard's trying to expedite the matter, but I think on some questions it might be helpful if he just asked 1061 the witness what went under those categories.

Mr. Ballard: I will accept your recommendation, Mr. Kelaher.

By Mr. Ballard:

Q. Would you state, Mr. Witness, what is included under the category "service," if you know?

A. Well, I will try to remember. It is quite a while ago and I haven't done this kind of thing for a long time.

Certainly speedy delivery. Satisfaction billing in that the billing came out and they were the wrong bills and they were always in hassels back and forth with the supplier. Availability of merchandise, close by, which is more or less a corollary of delivery.

You see, these people, especially being in different cities and different nationalities, and what-not, sometimes they say the same thing in a variety of ways. And then it becomes as any type of survey of this nature, somebody has to arbitrarily sit down and say this is apples and this is oranges, and this is wrong and that is what we did.

By Mr. Ballard:

Q. The only way we could check your divisions into apples and oranges would be to examine the original questionnaires?

A. That is correct. The rule was, I know, that anything that said "guarantee", that is clean, and anything that has to do with money, whether it be margins, discounts, or what, that is "price."

1062 Now where we differentiated between for example "acceptance" and "quality," which are more or less synonymous, I couldn't tell you. "Service" would include assistance, promotional assistance as distinguished from advertising.

Q. Now I don't wish to prolong this unduly. It must be apparent that this same line of questioning could be repeated as to almost every question here.

But now I would like to call your attention to question number 4 of the report, which appears on page 7 of the report, Commission's exhibit 101-I. The questionnaire asks "What brand of tires would you prefer"—

Hearing Examiner Kolb: (Interposing.) Which document are you on now?

Mr. Ballard: The report, sir, itself, exhibit 101-I, page 7.

Mr. Dias: What is the comparable question?

Mr. Ballard: I think it is 3-A.

The Witness: 3(a), yes.

Mr. Ballard: Question 4 on the report shows the answers to question 3(a) on the questionnaire form. I am sorry, but it does.

By Mr. Ballard:

Q. Now the question that was asked—or at least that you believe was actually asked, was the one on the questionnaire under 3(a), is that right?

1063 A. That is correct.

Q. Would you read that question?

A. "Assuming that you are about to put in a line of TBA and forgetting your present commitments, which of the following named brands of tires (these represent about 4 out of every 5 tires sold) would you prefer to sell?" And then there is a list of Firestone, Goodyear, Lee, Goodrich, U.S., General, Kelly, Seiberling, Your Oil Company's Brand, and other. (Specify.)

And that, regardless of what they said, had to fall into something here. That pretty well covers it, doesn't it?

Then the next part of the question "Why would you prefer this brand?"

Q. Now in your capacity as head of this research section, did you think that that question was enough to distinguish the brand of tire from the method of selling same?

A. No, they are bound up together.

Q. In other words, if a man was handling Lee tires or you knew the method of selling and buying Lee tires, and expressed a preference for Lee tires, do you believe that his preference was for the brand or for buying pattern, or for both?



A. I don't know. That wasn't part of the reason for having this study made. We were trying to find out, as it said in the front, the attitude and opinion of our dealers.

Mr. Kelaher: These figures are on 101.

1064 By Mr. Ballard:

Q. Now keeping in mind the question, would that question—would the answers to that question be the foundation for your first conclusion on the first page of this survey? I refer to the conclusion that reads as follows: "A preference among Atlantic's dealers for Lee tires and Exide batteries".

A. That is satisfaction. That is very important.

In other words, that says—we felt our dealers—and of course all things are relative, but we felt our dealers were satisfied with what they had at that time.

Q. By "what they had" do you mean the brand or the buying pattern?

A. I mean both, because they could buy Lee tires from Lee's branch stores had they preferred Lee and not liked us to distribute Lee. There were Lee stores in most of the major cities, and had been since the days I was a salesman back before the war, who sold Lee tires to service stations, garages, and so forth, just as we were selling them to our dealers.

Q. In your view, does the answer show that dealers were satisfied with their way of buying or with the brand, or both?

A. Well, both.

Mr. Kelaher: Your Honor, he has answered the question two or three times. I think it is pretty clear by this time they preferred Lee tires.

Mr. Ballard: It seems they preferred both.

1065 The Witness: You must put it together with questions 8 and 6. Question 4 says what brand do you

prefer; question 6 says "What do you sell?" and question 8 says, "From what type of supplier would you prefer to buy?" and then on to question 10, and on a survey of this type, to get a conclusion, you have to put the various pieces together.

Mr. Kelaher: It still winds up Lee tires and Exide batteries, does it not?

Mr. Ballard: Are you questioning the witness?

Mr. Kelaher: I am just trying to follow you, hopping around and I hope you will forgive me.

Mr. Ballard: I am trying not to, any more than is necessary.

Mr. Kelaher: I know you are.

By Mr. Ballard:

Q. Turning now to question 7 in the report, which is Commission's exhibit for identification 101-M, the corresponding question on the questionnaire, I believe, is number 5(a), is that not right?

A. That is right.

Q. Check and be sure.

A. Yes.

Q. Now would you explain the circumstances under which the question was to be asked and the full question? In other words, would you tell us how that question fits into the questionnaire?

1066 Mr. Kelaher: Are you referring to 5(a)?

Mr. Ballard: Questionnaire 5(a).

The Witness: And question 7 in the answers. Well, 5(a) couldn't be asked unless you asked 4. 4 says, "What brand of tires do you carry now?" And you are given two places, (1) and (2).

And then it says, "If one or more brands are not the same as preferred," you ask them "Why don't you carry your preferred brand?"

But if one or more of the tires which they carry are the same as their preferred brand, you don't ask them. They become the "I do's."

By Mr. Ballard:

Q. What does the word "exclusively" have to do with it? I see that on question 5(a).

A. I don't know. I can't remember that much of the detail that far back.

Q. Was the investigator supposed to say "Why don't you carry your preferred brand," or was he supposed to say "Why don't you carry your preferred brand exclusively"?

A. Frankly, I couldn't tell you without the instructions because up here it says "If one or more are the same," then this was to be asked. Now whether we had in the instructions a break between the one only and the one or more,

I don't know.

1067 Q. If a man had showed a preference for let's say Firestone tires, and he showed in number 4 that he was carrying both Firestone tires and Kelly tires, don't you think the question for 5(a) would be "Why don't you carry Firestone tires exclusively"?

A. I don't know.

Mr. Kelaher: Objection, your Honor. I think that is speculative.

Hearing Examiner Kolb: I think we are getting into speculation as to why these questions on this questionnaire were drawn. Certainly conclusions were reached from that questionnaire which became a part of the survey.

Mr. Mason: Which we don't have.

By Mr. Ballard:

Q. Now referring then to the reported answers, the answers to this question 7 in your report, you have there a category entitled "Obligation to Petroleum Supplier."

Would you state to the best of your recollection what kinds of answers you might have put under that?

A. This questionnaire was designed and the interpretation of it—this I do remember—to show us as unfavorably as possible. In other words, if there was anything on the shady zone, it was thrown against us, because we were looking for things which we should correct in order to improve, if necessary our relationship with our dealers.

Therefore, anything that implied any relationship 1068 whatsoever, be it friendly, contractual, or anything else, between the company and the dealer, which induced him to buy, was arbitrarily categorized "Obligations to Petroleum Supplier," and that gave you a piece there and of course competitive dealers were coded the same way, so your relative measurement remained true, but any inferences of corrected measures needed would be heavily weighted against us.

Does that explain it.

By Mr. Ballard:

Q. I think it does. If a dealer stated that he had a relationship—say he was a relation of his petroleum supplier's dealer, would that be—

A. What is that?

Q. If he was the brother-in-law of his petroleum supplier's salesman, would that be "Obligation to Petroleum Supplier"?

A. I don't recall we ever had one quite like that, but if he said "I like the salesman," or "I like the company," or "I always buy everything from the company," that was put in that category.

Q. That was put in "Obligation to Petroleum Supplier"?

A. Yes.

You must remember this thing was designed for our

internal usage and not designed for this particular type of thing or obviously it would have been—I mean by 1069 that the questions and answers at least would have carried the same numbers, so we wouldn't have to go back and fourth.

Q. Let me take one more question, and then I will stop. I am sure that my point has been gotten across.

Will you turn to the next page, which is page 12 of the report, Commission's exhibit 101-X. Now the question on that I think is 6(a) in the questionnaire?

A. Yes.

Q. Would you read the question and the questionnaire for us?

A. "Still assuming you were about to put in a line of TBA and forgetting your present commitments, would you have a preference as to any one particular type of supplier from whom you would want to buy your tires?"

"For example, to name a few types, there are: Your petroleum supplier; the tire manufacturer; the independent distributor of tires; another dealer acting as a supplier; an automotive jobber; a wagon peddler; other (Describe)".

In case they mentioned one that didn't fall into that category, they had the "other". And then "No preference."

Q. Now do you remember whether your instructions contained any definition of "buy", as, for instance, was a man instructed to consider who was selling, who was taking the orders, who was making delivery, who was sending the bills?

A. The interviewer?

Q. Yes. Was he instructed as to which of those 1070 was the man from whom the dealer was buying?

A. I doubt it. I don't remember.

Q. In other words, the dealer could use his choice as to who was selling and from whom he was buying?

A. Yes.

Mr. Ballard: I don't think I have any further questions, your Honor.

By Mr. Mason:

Q. Mr. McIntire, if some third person were asked to check the validity and reliability of this study, what material would they have to have before them to make such a check?

A. Well, you would have to have the questionnaires and I suppose, number two, the names and addresses of the people that filled them out, the people who were interviewed, I should say.

Q. Would you need to have this instruction sheet that went out with the questionnaire?

A. Sure, you would have to have the whole package, if you were out to spot check it. I imagine, leading up to it. If you were out to spot check it, you would have to have it, and those things were available up until—Stewart Dougall, who would have had the names and addresses, destroy their files after I think it is five years, so up-until 1952 that material was available.

Q. If you had let's say I were to hire, on Good-1071 year's behalf, a market research firm to check whether this was a sound study, what kind of material would they ask for, from your experience in this field?

A. They would ask you for the questionnaires.

Q. And the whole—

A. (Interposing.) And the instructions you gave to the interviewer.

Q. Are those questionnaires available?

A. I understand, from the thing read and that is the way I was told it, that there are about five cities out of



the 40-odd of which some part of the questionnaires are available. Of course it was a mass of data at the time that was taken.

Q. Would that remnant be enough to check the survey?

A. Oh, no. If you are going to check a survey, you have all—just as this survey says, you need a random sample. You have to set up some kind of a system. You would have to take a cross sample, in order to get a cross section, and that is just plain statistics.

Q. So that there is no way you know of now that the accuracy of this survey could be checked by a third party?

A. No, sir.

Mr. Mason: Your Honor, I renew Goodyear's objection to the admissibility of this document in evidence as to the truth of the matter asserted which I understand to be the offer of the attorney for the complaint.

1072 Mr. Kelaher: Your Honor, in that connection, I think the soundness of the survey has been amply demonstrated by examination of the witness. The entire questionnaire is available; this man has demonstrated he is a very competent analyst; and it seems to me there shouldn't be any question about his trustworthiness.

Mr. Mason: I think his testimony already indicates the fact that it is very dubious whether this data set down here actually reflected underlying work material and I think under those circumstances it would be highly prejudicial to Goodyear to admit this document into evidence.

Hearing Examiner Kolb: Well, as far as I am concerned, I don't see any reason why it shouldn't be admitted. This document has been prepared by Atlantic and the analyst has made his analyzation.

Of course now he brings some question about it which I think are too late now to sufficiently affect the document.

I will admit it so far as Atlantic is concerned, subject to motion to strike by Goodyear.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 101-A through Z-20 for identification, was received in evidence.)

Mr. Mason: Could I have the Hearing Examiner's statement read, preceding his ruling?

(Statement read.)

1073 Mr. Mason: I take it the suggestion that these questions come too late doesn't apply to Goodyear?

Hearing Examiner Kolb: Well, I said subject to strike on the part of Goodyear. I am not impressed by the analyst questioning his own analyzation at this time in this proceeding.

Mr. Kelaher: Off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record. The questionnaire will be received in evidence as Commission's exhibit 101-Z-21 through 27.

Mr. Kelaher: I think the record should note that this document was previously identified as Respondent's exhibit A-5.

Hearing Examiner Kolb: All right.

(The document referred to, heretofore marked Respondent's Exhibit A-5 for identification, was re-marked COMMISSION'S EXHIBIT 101-Z-21 through 27, and received in evidence.)

Hearing Examiner Kolb: Anything further?

Mr. Kelaher: We have nothing further today, your Honor.

Hearing Examiner Kolb: We will adjourn until 9 tomorrow morning.

1075 Hearing Examiner Kolb: The hearing will come to order.

Mr. Dias: I will call Mr. Drennan.

ROBERT B. DRENNAN was thereupon called as a witness for the Commission and having been duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Dias.*

Q. Will you state your full name and business address?

A. Robert B. Drennan, Harris & Leonard, 1301 West 9th Street.

Q. How long have you been employed by Harris & Leonard?

A. Approximately four years.

Q. In what capacity?

A. As a salesman.

Q. Were you a salesman for the full four years?

A. That's right.

Q. Will you tell us what your sales territory is?

A. Oh, it consists of Media territory, MacDade Boulevard, and over in West Chester Pike and Upper Darby.

Q. Is any part of your territory in the State of Delaware?

A. No, sir.

Q. What type accounts do you solicit?

A. Mostly gas stations and new car dealers, a few commercial.

1076 Q. How often do you call on those accounts?

A. Twice a week.

Q. Are there any Atlantic service stations in your sales territory?

A. Yes, sir.

Q. Can you tell us how many?

A. There are quite a few. I call on 20 of them.

Q. Are there more than 20?

A. I would say so.

Q. Have you ever called on those others?

A. Yes, sir.

Q. When and how often?

A. Well, when I first took the territory over and when there is a new man goes in I call on him, and I can't do any business with him in recapping, then I don't bother any more.

Q. These 20 that you call on, do you solicit their business for new tires, recapping and batteries?

A. Yes, sir.

Q. What type business do you do with them?

A. Well, I do all 75 percent of their recapping, and a few of them on new tires.

Q. 75 percent. Will you explain that, please?

A. I would say 75 percent of their recapping. In other words, they are sending some of it out to somebody else; I am not getting all of it.

1077 Q. I see. Now can you name some of those accounts that you sell to?

A. Yes, sir. Joe Castagna; Hap Little's; Clover Leaf Service; Lloyd Ammon; Jimmy Matthews; Don McLaren; Vern Carron; Floyd Mohny; Edward Sprague; F. J. Bal-loran; Ed Zola; Bill McKee; Parks & Dawn; Russell's Atlantic; Ted Riter's Atlantic; Earl Shank's Atlantic; Young's Atlantic Service; Terence Atlantic; Tim Cappeli; and Bill Way.

Q. Mr. Drennan, now you have listed the Atlantic stations to which you sell, is that correct?

A. That is right, sir.

Q. And will you tell us the type business you do with each of them? Do they all buy about the same thing?

A. Yes, sir.

Q. Will you please tell us what they buy?

A. Well, they buy all their recapping from me, as I said, about 75 per cent of it, and a few of them buy new tires. Now and then.

Q. Sir?

A. Now and then, an occasional tube.

Q. Can you point out those that buy a new tire or tube occasionally?

A. Yes, sir. Vern Carron, in Springfield has bought tires from me. And Russell Smedley, on Marshall Road, in Drexel Hill, Russell's, has bought tires.

1078 Q. Are there any others?

A. Clover Leaf, he has bought tires from me. And Hap Little, he has bought tires from me. Balloran bought tires from me. Earl Shank; Young's Atlantic; and Terence's Atlantic.

Q. Is that all?

A. Yes, sir.

Q. Now those that buy the tires from you, did they buy on a stocking basis?

A. No, sir.

Q. How about batteries, do they buy batteries from you?

A. No, sir.

Q. Did any of these stations buy your batteries?

A. Well, I would say Clover Leaf now and then might have bought a battery from me.

Q. Any other stations?

A. No, sir.

Q. Did you offer them batteries, or offer to sell batteries to each of these stations?

A. Yes, sir.

Q. How often do you call on them?

A. Twice a week.

Q. Do these stations carry tires, batteries and accessories, all of them?

A. Yes, sir.

Q. Do you recall the type or brand that is advertised on or about the stations?

1079

A. Yes, sir. Goodyear.

Q. Are there any exceptions, any in there that do not carry Goodyear?

A. Yes, sir, there is. Hap Little carries Firestone. Clover Leaf, he carries U. S. and Goodyear. And Earl Shank, he carries anything. Parks and Dawn, it is Lee. Young's Atlantic, it is Lee. And Terence's, why, he carries anything, Goodyear or U. S. He don't stock too many.

Q. Take Clover Leaf. Is that an Atlantic station?

A. Yes, sir.

Q. Does that operator own his own property?

A. No, he is an independent. He leases the property from somebody else.

Q. How about this Little's?

A. He owns his own property.

Q. How about Parks and Dawn?

A. He owns his own property.

Q. Earl Shank's?

A. He owns his own property.

Q. And Young's Atlantic?

A. Well, he is renting from somebody else.

Q. Other than Atlantic, you mean?

A. Yes, sir.

Q. How about Terence?

1080 A. He is renting from somebody else other than Atlantic.

Q. Now you stated that you have tried to sell them all new tires from time to time?

A. Yes, sir.

Q. Has any operator given you any reason why he wouldn't buy your tires?

A. Well, yes.

Q. Who, which operator?

A. Well, Floyd Mohney. Ed Sprague.



Q. Is that all?

A. Yes, sir.

Q. What did Floyd Mohney tell you, and when?

A. Well, he told me, he said, "After all," he said, "You can't bite the hand that feeds you."

Q. What did that mean to you?

A. Well—

Mr. Mason: (Interposing.) I object to that.

Hearing Examiner Kolb: Objection sustained.

By Mr. Dias:

Q. What else did he say?

A. Well, being as he is leasing from Atlantic, why, he thought he should handle their product.

Q. When was it he told you that?

A. About a year ago.

Q. What did Ed Sprague tell you? And when?

1081 A. Well, as a matter of fact, he told me about two weeks ago. He said, "After all, I am leasing from Atlantic, it would look bad if I bought a set of U. S. Royals off you and put it on the credit card for 30, 60 and 90 days."

Q. Are there any others that made statements to you?

A. Well, Smedley, I talked to Russell Smedley, I talked to him on tubes, and he stated that it wouldn't look right if I had U. S. Royal tubes sitting on the rack where I should be having Goodyear 'cause that is what he handled.

Q. When did he tell you that?

A. About a year ago.

Q. You mentioned that you also sold to Balloran?

A. Yes, sir.

Q. Hasn't Balloran left the station—what was the address of that station?

A. West Chester Pike and Newtown Road, Newtown Square.

Q. When did you start selling him?

A. When I first went with Harris & Leonard, approximately 4 years ago.

Q. What did you sell to him at that time?

A. I occasionally sold him a U. S. tire; he would call for it, and I would run it out. And I did all his recapping.

Q. And did you continue to sell him all the time he was in the station?

A. Up until a few months ago, yes, sir.

1082 Q. When was that, approximately?

A. I would say maybe February, March. Back in that time.

Q. Did he leave his station at that time?

A. No, sir, he left the station about a month and a half or 2 months ago.

Q. Did he give you any reason why he discontinued purchasing from you?

A. Well, he said he wasn't carrying enough of his own stock on hand, and that he had to stock up on his own.

Q. Is that all he told you?

A. Yes, sir.

Q. Do you know who the Goodyear distributor is in your district, your territory?

A. Well, there is two of them. Ed Parris is one of them, and Miller, I think it is Ernie Miller.

Q. Do you know whether either of those gentlemen have recapping facilities?

A. No, sir, they don't. I know Ed Parris doesn't. I wouldn't say on Ernie Miller.

Mr. Dias: That is all, your Honor.

Hearing Examiner Kolb: Cross-examine.

*Cross-Examination by Mr. Ballard.*

Q. Mr. Drennan, this list that you have furnished us was made up from your records?

1083 A. Yes, sir.

Q. And this constitutes all the Atlantic stations who were your regular customers?

A. Yes, sir.

Q. Harris and Leonard's specialty is recapping, isn't it?

A. That is right, 99 percent of our business is recapping.

Q. And your biggest competitors are C. A. Powers—

A. In that territory, yes.

Q. The Lanza people don't get down that way very much, do they?

A. Who?

Q. Are you familiar with that company?

A. I never heard of them.

Q. C. A. Powers are the biggest competitor of yours then?

A. Yes.

Q. Between you, you do most of the recapping business in your territory?

A. Yes, sir.

Q. Now are you pretty familiar with Mr. Parris?

A. I don't know him personally, but I meet him occasionally.

Q. I think he offers recapping, doesn't he?

A. Yes, sir.

Q. I suppose he arranges to have that done by what? Would it be Goodyear stores?

A. Goodyear in Philadelphia.

1084 Q. They have a plant here in Philadelphia?

A. That is right.

Q. I suppose he advertises that as factory recapping?

A. Yes, sir.

Q. And he offers that to the same Atlantic dealers that you do?

A. Yes.

Q. And do they deal with you?

A. Yes, I can give them quicker service. In other words, if they call me up at 8 o'clock in the morning, I can go out and pick the tires up and have them back the same day.

Q. Miller offers the same deal to his dealers, does he?

A. I imagine so.

Q. And I forget, what kind of batteries do you handle?

A. U. S.

Q. U. S. batteries?

A. That's right. It has our own U. S. name on it, made by National Carbide.

Q. What is your price on those batteries? What quantities do you offer them at?

A. Not any quantities. I sell them at distributor billing.

Q. Do you ever make a concession below that price?

A. No, sir.

Q. Ever put on a special deal of them?

A. No, sir, distributor billing is all.

1085 Q. You don't have this baker's dozen deal?

A. No, sir.

Q. Did you ever hear of that?

A. Yes, sir.

Q. I think—is it Miller or Parris that offers that?

A. I don't know.

Q. One free for every 15 or something like that?

A. Yes, something like that.

Q. You don't offer that?

A. No, sir.

Q. This fellow, Bill Way, he is one of your customers, isn't he?

A. Yes, sir.

Q. Do you know him pretty well?

A. Well, as a customer.

Q. He used to be an Atlantic salesman, I think?

A. Yes, sir, he did.

Q. I think he had about the same territory where his station is, didn't he?

A. Yes, sir.

Mr. Ballard: No further questions.

Mr. Mason: No questions.

*Redirect Examination by Mr. Dias*

Q. Mr. Drennen, on that battery purchases, do you have any customers that purchase batteries on a stocking basis, whether Atlantic or anything else?

A. No, sir.

Mr. Dias: That is all.

Hearing Examiner Kolb: That is all, Mr. Drennen.

(Witness excused.)

Hearing Examiner Kolb: We will take a short recess.

(Whereupon a short recess was taken.)

1106 JAMES M. MYERS, JR. was thereupon called as a witness and having been duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Kelaher*

Q. Will you please state your name and home address?

A. James M. Myers, Jr., and I live at 214 Sugartown Road, Devon, Pennsylvania.

Q. And were you at one time an Atlantic lessee dealer?

A. Yes, sir.

Q. During what period?

A. It started sometime in May of 1950, and it ended September first, I believe, of 1951.

Q. And where was your station located?

A. At the corner of Eagle Road and West Chester Pike, Minoa, or Havertown, if you want to call it that.

Q. In Pennsylvania?

A. Yes, sir.

Q. Did you invest your own capital in the station?

A. Yes, sir.

1107 Q. Approximately how much?

A. I would say around—well, I said my own—it was partly borrowed capital, but it was from my father and my own, and about, I would say, around \$7,000.

Q. Now when you began operations in May 1950, what TBA did you carry?

A. Well, Lee tires, Exide batteries, and I believe rubber products were Thermoid, and then just the other general run of polishes and all those things that you would have.

Q. And who was your supplier of TBA products?

A. Ernie Miller. Miller Automotive, I believe they call it.

Q. What was your reason for purchasing Lee tires, Exide batteries, Thermoid fan belts, and so forth from Mr. Miller?

A. Well, it was just—he handled the line for Atlantic and it was just understood that you purchased from him.

1108 By Mr. Kelaher:

Q. Did you attend training school at the time you opened the station?

A. Yes. I believe that I went to a training school, it seems to me it was for two weeks.

Q. Was that conducted by Atlantic?

A. Yes. A fellow by the name of Ed Krebs handled it and it was conducted at the corner of City Line and Con-



schohocken Avenue, at the Atlantic station, in the back room.

Q. And was TBA mentioned at that training school?

A. Yes.

Q. Were any specific TBA products mentioned at the training school?

A. Well, I really don't recall.

1109 By Mr. Kelaher:

Q. Prior to the time you became an Atlantic dealer, had you had experience in service station operations?

A. Yes, back many years before that I started with Esso, Standard Oil Company of Pennsylvania, as an employee. They didn't have dealerships in those days, and I worked in the service station and became a manager of a service station.

Q. About what year was that?

A. Well, I started 1930, I think, and about 1931 I took over as manager of the service station in Bryn Mawr and then from there I went to City Line and Bryn Mawr Avenue, which was one of their largest stations at that time.

Q. So that you were experienced as a service station operator?

A. Yes, I had a wonderful experience in the service station business.

Q. Now how long did you continue to carry Lee tires, Exide batteries, and the other TBA products you mentioned?

1110 A. Until the date when Atlantic changed over to Goodyear.

Q. And that was—

A. Which I can't recall the exact date. It has been four or five—four years ago, whenever it was.

Q. I show you Commission's exhibit 150, which was a letter sent by Mr. Colley to dealers, dated March 1, 1951, and ask you to read that, please.

A. Out loud?

Q. No, just to yourself.

A. All right, I have read it.

Q. Do you recall receiving that letter?

A. I don't want to say yes for the simple reason that I had letters, but if it was that letter, I couldn't say, it has been too long ago for me to identify that letter and be an honest man.

Q. But you did receive letters announcing the change, is that correct?

A. Yes, sir, that I did receive.

Mr. Kelaher: Your Honor, I think the record does show that this Commission's exhibit 150 was sent to all Atlantic dealers at that time.

Mr. Thompson: I will stipulate that is so.

By Mr. Kelaher:

Q. Now when the change-over to Goodyear TBA was announced by Atlantic, did any Atlantic representative make any statement to you concerning the matter?

A. Yes, just that we were changing over to Goodyear. I mean, we were told that we were changing to Goodyear and we were not going to have Lee any more.

Mr. Thompson: Without the proper identification, I move to strike again.

Hearing Examiner Kolb: Well, he said it was around the middle of 1951 when the change-over was made.

Mr. Thompson: Yes, sir, but the person who made the remark hasn't been mentioned.

Mr. Kelaher: If counsel will be patient, for one question we will get to that.

By Mr. Kelaher:

Q. Who was the Atlantic representative who made that statement to you?

A. William Way.

Q. Do you recall the statement he made to you at the time, or the conversation?

A. No, I don't, sir. Just that we were changing, that was all, and no particular conversation, no excitement about it or anything.

Q. And did you then begin to purchase Goodyear TBA?

A. That's right.

Q. From whom?

A. Ernie Miller.

1112. Q. Now you stated at the time that you received a letter or letters from the Atlantic Refining concerning the change-over, is that correct?

A. Yes.

Q. And did such letters state that you had freedom of choice as to purchasing TBA?

A. I can't recall. ~~████~~ are speaking of the time of the actual change-over?

Q. Yes, at the actual change-over.

A. No, I don't recall it said freedom of choice or otherwise, at that particular point.

Q. Subsequent to that, did you receive a letter which stated that?

A. Yes, I did receive a letter later than that, stating that I had freedom of choice.

Q. Did you ever discuss that letter with salesman Way?

A. Yes, I did.

Q. What did you state to salesman Way?

A. I said, "Bill, does that letter mean what it says?" and he said, "You try it and you will find out." That was the answer I received.

Q. So you continued to purchase Goodyear TBA?

A. That's right.

Q. Do you recall at one time that Atlantic used your station as a model station?

1113 A. I recall it very clearly.

Q. Do you recall the approximate time when that occurred?

A. All I can tell you is I would say the late winter or early spring of 1951.

Q. And would you just describe what transpired at that time, in your own words?

A. Well, there were four or five days where salesmen of the Atlantic Refining Company and what they called—I don't know what they were—fellows who worked on service stations, and helped the boys around to teach them different things, I don't know what they called them, but these men were brought in there, five, six or seven of them, and they worked to clean and scrub and paint and do all this sort of thing, and rearrange your inventory so it looks nice and all, coming to a point where, on this one particular lay, there would be certain gentlemen from Atlantic Refining Company come out there and just view this thing, as a model station.

I mean it was, everything was in place, in order, and that was the idea of the thing.

Q. Now was anything done with respect to TBA when they made your station into a model station?

A. Yes. Any items that I had, which I had very few of, which were foreign to the Atlantic ordinary TBA program, were not supposed to be in view.

Do you want me to go on, or do you want to question me?

1114 Q. Please go right ahead.

A. The night before this model station was to happen, which was to happen the next morning—by the way all the men were dressed in brand-new coveralls, with

bow ties and we were to look real pretty. So they asked me if they could remove these items from my place.

Q. What specific items are you referring to?

A. I had a few foreign tires, as I recall.

Q. What brand?

A. I think I had a couple U. S. Royals laying around and a few Lees left, which I hadn't sold from the time I had them, and they asked me if they could remove them, and I told them absolutely not to take anything from my place, but the next morning when I came in they were gone and I understood they were hauled around in the—some of the men's cars, in the backs of the cars.

And I didn't receive those back for several days, and some of the things there I am sure I never got back because at the time I was very upset about it. It was just one of those things.

Q. Now did they also take some accessories at that time which were not in the sponsored line?

A. Yes, but I can't recall what they were. There was a number of items taken.

Q. And they were put in the cars of these Atlantic representatives?

1115 A. One thing I can remember was taken out of there. I used to sell a lot of seals for front wheel bearings, and I had a case—in those days we were not allowed to sell those things, and I had a case of them on the wall and that was removed and brought back to me later.

Q. Do you recall the brand name of that item?

A. No, but I can find out for you. They are now in certain stations, I see them.

Q. Now you stated that these items that you have mentioned, the only items that were taken out were non-sponsored TBA items, is that correct?

A. That's right.

Q. Did the company ever reimburse you for any of the TBA they failed to return to you?

A. They claimed they returned it all, so there was no such thing as reimbursement.

Q. But according to your statement, you don't think they did return it all?

A. That's right.

Q. At the time of the change-over to Goodyear TBA, was your station identified with Goodyear signs?

A. Yes.

Q. And did you request such identification?

A. No, but if we were going to sell Goodyear, we certainly had to have some identification, which I just understood.

1116 Q. Now prior to handling Goodyear TBA, you stated that you handled Lee tires, Exide batteries; were you dissatisfied with Lee tires and Exide batteries?

A. No, I never was. And there was a good reason.

Q. What was the reason?

A. Well, Lee had a fine guarantee with them, and we had no guarantee except for faulty workmanship with Goodyear, but we had a road hazard guarantee with Lee tires, a very fine one, which people liked.

Q. Now, price-wise, how did Lee tires compare with Goodyear?

A. Just about the same. You see, I bought them all from Ernie Miller and as near as I know they were around the same. I don't recall that.

1117 By Mr. Kelaher:

Q. Was it your own choice to purchase TBA from Miller's Automotive?

A. No.

Q. Were you called upon by other sellers of TBA?

A. Oh, yes.



Q. Do you recall a Mr. Douglas Kevis, of Harris and Leonard?

A. Yes, sir.

Q. Did he call on you?

A. Yes, for the whole time I was there.

Q. Did you give him any of your recapping business?

A. I gave him all my recapping business.

Q. At that time were you solicited for recapping business by Atlantic's representatives, or by Mr. Miller?

A. No, because Mr. Miller didn't have any recapping up until the point I left. I left soon after that, before he got into recapping. I understood we were going to have it, though. I had heard there was going to be recapping.

Q. Now, did Mr. Kevis ever solicit the sale of new U. S. tires from you?

A. Yes.

Q. Do you recall—did you purchase such new tires from him?

1118 A. No, I didn't.

1119 By Mr. Kelaher:

Q. Did Mr. Kevis solicit business from you after the change-over to Goodyear TBA?

1120 A. Yes.

Q. And did he solicit business from you prior to the change-over to Goodyear TBA?

A. Yes.

Q. And did other jobbers and sellers of TBA solicit business from you both prior and after the change-over to Goodyear TBA?

A. Yes.

Q. Would you name some of those other suppliers?

A. The ones I recall, well, Harris and Leonard you have. John Stewart was one, he sold service station supplies such as towels and that sort of thing, brooms, mops,

anything like that. Then there was Gaul Deir and Shearer, who has a very wide selection of anything to sell or for use I mean as tools or equipment in the service station.

And Aviation Auto Supply, was one, who had a wide selection of anything you wanted in service station supplies or TBA. Then there was an Upper Darby Automotive; they are now out of existence.

Q. Do they solicit TBA business from you?

A. Yes.

Q. Both before and after the change-over to Goodyear TBA?

A. Yes, sir.

Q. Did you purchase TBA from them?

A. Very, very little. I mean just odd items that 1121 maybe I couldn't get from Ernie Miller.

Q. What kind of business relations did you have with Atlantic representatives? Were they cordial or—

A. For the first four months, yes.

Q. What happened after that?

A. Well, for many years I believe we had had no wars on gas, and they started after I was in there about four months, in the business. And it was a very severe drop in prices and it was suggested that I lower my price on gasoline, which I couldn't see to do.

Q. Who suggested that?

A. The salesman told me, Bill Way, told me I should lower my price and get in line with the other dealers.

Q. The Atlantic salesman?

A. That's right.

Q. Do you remember his name?

A. Bill Way.

Q. Go ahead.

A. So I asked him what was going to happen, was I going to stay there and go broke or what, and he shrugged

his shoulders. So I told him unless they did something about it that I was going to do something about it. So he just smiled at me and the next day I proceeded, and I put a one page ad in the Havertown News, advertising one quart of oil with every 10 gallons of gas. I also had four 4 x 8 signs put up on each side of my station, 1122 with the same information on it, on both sides, and then I proceeded to give these people the oil.

At first I was paying for it, but I kept my price up where it was, didn't drop it, and then if the price finally went down to where it was three cents below where I was selling then I would start to lower slightly, keeping it three cents all the time above and that was paying for this oil I was giving away. And then Atlantic came through with subsistence, which they told me—Bill Way and he came and told me unless I complied with their wishes, and brought my prices in line with the other dealers, I would not get the subsistence.

So I warned him he better discuss it with the company lawyer before he started to do that, take exception to me over other dealers, so nothing more was done and I did get my subsistence, which was used to pay for this oil to give to the clients or customers, and I used that for four months under terrific pressure by Mr. Lukens and Mr. Arnholt and Mr. Bowman, Bill Way and Pete Lonzono all were involved and came out there and gave me this terrible pressure and I refused to ever drop my price or do anything that would stop me from making money because I was making money when the rest were losing it and they were not going to tell me how to lose my money and that is what happened and that was the first trouble I had.

And then my relationship, of course, was very un-1123 cordial during that period. They were rough.

Q. Now were all the men you just mentioned Atlantic representatives?

A. Every one.

Q. Did anything occur after that with respect to your— did you have any further instances with Atlantic after that?

A. Well, not about that.

Q. Did you have any incident with respect to any other matter concerning station operations?

A. Yes. In the spring of 1951, sometime in there, I just can't recall dates, it is four years ago, but I had purchased or had given Bill Way an order one day for \$600 worth of oil, as I recall, of which there were 25 cases of Capital Motor Oil, which was their very cheap oil, sold in two-gallon cans, and that would be 75 cans, in other words, of oil.

Previous to that I had purchased larger quantities, but I had no place to put it and it would sit out around the building and would rust up and the cans would leak and I was taking a loss on it.

So I didn't want any more than that of it. And three days later, before this oil was received, I had a visit from Mr. Arnholt, and Bill Way and the TBA man, whose name I can't recall. It was George somebody. And he was the man who apparently sort of kept track of TBA for Atlantic. And Bill Way told me that when he walked in, 1124 they all walked in, and Bill Way told me that he would like to sell me one hundred cases of Capital Motor Oil. So I told him "I can't do that. I have just given you an order, I haven't received the oil yet, for \$600 worth of oil, including 25 cases of this motor oil, Capital," and I just couldn't see my way clear to buy any more and have it lay around the place.

In fact, they told me I could park it out around the driveway, and I said "Yes, I guess I could put it on the roof, too," but after Bill stopped talking this George started next. And I was very courteous to Bill Way, but I

wasn't quite so courteous the next time, and I told that gentleman the same thing, and then Mr. Arnholt spoke to me and I was very discourteous and I told him that I had already told all three of them and if they had called on any other place except an Atlantic station, they couldn't violate the man's ethics the way they were doing with me, and I was too busy to talk to them and please leave.

By Mr. Kelaher:

Q. Did Atlantic representatives ever look at your records?

A. We were supposed to keep a record at all times of our sales each month and the salesmen would come in once a month and ask for that book and look at the record of sales.

Q. And did you ever have any conversations with an Atlantic salesman concerning your records?

A. Oh, yes, we would have conversations, but I 1125 don't know what you refer to.

Q. Did your records include sales of TBA?

A. Oh, yes. I kept an accurate record of that.

Q. Now you stated that you left—let me ask you this first. When you first went into the station in May 1950, how long a lease did you have?

A. Three months.

Q. And then that would take you up to about September, 1950, and at that time what lease did you have?

A. Then I received a one year lease.

Q. At that time did Atlantic have a three-year lease?

A. I don't think so. That came later. As I recall, and it was, I think, after my time, in fact. I heard about it, but I don't believe they did.

Q. Now you stated that you left the station in September 1951. Would you please state the circumstances which led up to your leaving the station?



A. Well, the first thing that happened was approximately the first of August—I received a visit out at my home. I had been sick for several days but Mr. Arnhold, Mr. Lukens and Bill Way came over and they just walked in and sat down in the living room and handed me a piece of paper saying that my lease was terminated as of September first. So I asked them if that was all there was to say, and they said “yes,” and I said, “well then, that is fine.” I will be seeing you, and they walked out.

1126 And so then I decided to go into Atlantic Refining and see if I could not reason with someone up near the top, which I did, and I got as far up as Mr. Bowman, who was there at that time, and he assured me I could do nothing and I was wasting my time there.

I asked him for reasons and the only reason I can recall that was given was that my place was not clean.

So I didn't say any more, but I went out and immediately had my 4x8 signs changed over to these words: “Atlantic has terminated my lease.” Then I had a large “W H Y?” with a question mark, and then “Ask your Atlantic dealer, he knows.” And I proceeded to stay there for the balance of that month until the time came for me to go.

And we left there 11 o'clock the last night I believe of the lease, and they had I think eight men out that day including a lawyer, they told me, and it was pretty rough sailing all day—

Mr. Thompson: (Interposing.) Who, me?

The Witness: You know, I believe it was. If you just smoked a pipe, I think it would be you.

By Mr. Kelaher:

Q. Now how did you gallonage run in the station?

A. When I opened, the first month I opened, we sold 40 or 41 thousand. I don't quite recall. It was over 40.



Q. Do you recall what Atlantic expected of a station that first month?

A. They told me 24 and I had told them that I was sure it would pump 40 because I knew the corner very well and was familiar with that whole area.

1128 Q. Were other dealers after that station at the time?

A. Yes, I understood. I was told by Mr. Arnholt there were many after it and I was in the leather business, and I came in there and we had—I did a sales job with him, and told him what I could do and he went along. And I finally received word from him by telephone, I called him from Pittsfield, Mass. one day when he had told me to call and he said the place was mine, and that night I picked up the phone and called Chicago and resigned from my position in the leather business. And I came down there, very innocently.

Q. And now you started at 40,000. Did you increase your gallonage?

A. Yes, the gallonage reached almost 50,000 in the month of August before I left. I may qualify that. It may be July, I'm not sure. There was one month it was over 49,000, either July or August, possibly July. And the next month was very close to that. It had moved up close to a 10,000 increase over the year.

Q. And did you always pay your rent promptly?

A. There was no such thing as paying rent promptly. That was deducted from your gasoline.

Q. And were you in your opinion a good station operator?

A. I still think I'm the best one around.

Q. And you were never given a reason by Atlantic for terminating your lease?

1129 A. No, sir.

Q. Now did Atlantic encourage promotion deals during various parts of the year?

A. Yes.

Q. Would you tell us a little bit about that?

A. Well, the number one promotion was the day I went in there, when we had search lights beaming up in the sky off a truck, using up a lot of electricity, by the way, and we had cigarettes we gave away, pack to every man and we had gardenias for the ladies—every lady, and all of that costs a lot of money and they also—Mr. Lomenzo suggested I have dancing girls on the driveway.

Mr. Thompson: I would like the record to show that that is the day I was at the station.

The Witness: They never were there.

Mr. Thompson: Neither was I.

By Mr. Kelaher:

Q. Who paid for this?

A. That was paid for by the dealer, by me. And as I recall the figure, it came close to \$500 for all of that.

1130 Q. How much?

A. Around \$500.

Q. Did they have promotions after that of any kind?

A. Yes, we had another promotion which they came out there about—and I just don't recall the details of that promotion. It was more of a sign promotion or that type of thing, or advertising, which we helped pay for. They were supposed to pay for part and we were supposed to pay for part, and we would pay for a part and that ran maybe several hundred dollars for that. That was—I don't know what point that happened.

Then I was told, in the spring of 1951 that I should put on another driveway promotion like the first one.

Mr. Thompson: Tell me by whom, would you please?

The Witness: Yes, that was by Bill Way, and I guess Bill Way was the only one I can recall. I know for sure. The rest I wouldn't know. There may have been others.

By Mr. Kelaher:

Q. And the others would be Atlantic representatives, too?

A. If they did say that, and I don't want to say that because I might—I am not sure.

Q. What type of promotion was this one?

A. That was gardenias for the ladies and cigarettes for the men, I believe, again, that we went for, and we had that again, and—

Q. Who paid for that?

1131 A. I paid for that entirely myself.

Q. And did you need that type of promotion?

A. No, sir, I sure did not. Not with an increase of gallonage like I had and an increase in general business over the year, I needed no promotions or no advertising. I was having a job taking care of the business I had.

Q. So you only had this promotion at Atlantic's request?

A. That is exactly right.

Mr. Kelaher: No further questions.

Mr. Thompson: May we have a couple of minutes to consult counsel, your Honor?

Hearing Examiner Kolb: We will recess for five minutes.

(Whereupon, a short recess was taken.)

1132 Hearing Examiner Kolb: The hearing will come to order.

*Cross-Examination by Mr. Thompson.*

Q. Mr. Myers, I was a little curious about this model station you considered.

A. Yes, sir.

Q. Did you mind your station being a model?

A. I didn't think I was going to mind it, but I found out that I did mind it terribly before I was finished.

Q. That happened in 1951, didn't you say?

A. Yes, sir.

Q. And the purpose of it was to have a lot of Atlantic people come out and view a model station?

A. That's right.

Q. They did come out and take a lot of pictures?

A. Not a lot, just two people.

Q. They were top brass?

A. I think Mr. Bowman, Mr. Lukens.

Q. Fairly high Atlantic officials?

A. I guess you'd call them high.

Q. And you recall that a lot of pictures were taken of the station?

A. I don't believe any were taken.

Q. You don't. Well, you don't recall pictures being taken?

1133 A. No, I don't. No, sir.

Q. You yourself are rather photogenic?

A. I'd rather have you decide that than me.

Q. Modesty prevents you from answering.

Was your picture taken that day with these people?

I have to withdraw the question—

Mr. Kelaher: Objection.

By Mr. Thompson:

Q. Would it refresh your recollection if I asked you if your picture was taken with these people?

A. No, it wouldn't.

Q. Would it refresh your recollection if I suggested to you that this station of yours having become a short time model was later used for advertising purposes? Do you recall anything of the kind?

A. No, sir.

Q. I am going to ask you a few questions about the circumstances surrounding the failure of the Atlantic to renew your lease on September 1, 1951. That was correct, wasn't it?

A. I believe so.

Q. Before I come to that, it's my recollection that your testimony was inadvertent in one respect in fixing a date. I think you said that the model station incident occurred the latter part of 1951 and that the record does so say—

A. No, I didn't say that. I said I thought that it 1134 happened—mind you, this is four years ago—and I did say that I thought it happened in the latter part of the winter or the early part of spring.

Q. Yes. Would it refresh your recollection as to the date if I suggested to you that the model station incident occurred before Atlantic had adopted the Goodyear plan and was a kind of a set up arrangement for advertising purposes?

A. No, I wouldn't want to say that. I have no recollection of whether it was before or afterward. That is just something I can't remember. It's impossible to remember things back that far as to months and dates.

I know it was in the spring or late winter.

Q. But the change-over wasn't until after the 1st of March '51, was it?

A. You'll have to tell me, sir; I can't remember that.

Q. You didn't recall receiving a letter dated March 1, 1951 from Mr. Colley which announced the change-over? That was shown to you by Mr. Keláher.

A. Yes, the one you brought over here?

Q. Yes, sir.

A. That exact letter I just wouldn't want to say that I could remember. It's impossible to remember that long the particular wording or anything of a letter and if I said otherwise it might not be true.

Q. But this model station incident must have been  
1135 just about that time because that announcement, you  
will recall, was in March of 1951.

A. Spring starts when?

Q. I can't remember that year very well, can you?

A. It could have been, I said in late winter or early  
spring. It could have been after that—I just can't tell  
you.

Q. All right, sir.

Now, may we direct your attention to a couple of months  
later, that is to say the summer of 1951.

A. Yes, sir.

Q. Before your lease expired and before Mr. Arnholt  
visited you you retained counsel, did you not?

A. I did not.

Q. You did not, sir?

A. I have never had counsel.

Q. Didn't Arthur E. Dennis represent you?

A. No, sir; never heard of him.

Q. Well, this is extraordinary. Didn't you ask him to  
call on Atlantic on your behalf?

A. Never heard of such a man.

Q. Were you a member of the Delaware County Dealers  
Association?

A. Oh, yes.

Q. And do you recall making a speech at a meeting  
1136 of that association?

A. I believe I did.

Q. Do you recall Mr. Dennis as counsel for that associa-  
tion?

A. Well, see, he was counsel for the association, what  
he did was something else, but I did not retain counsel.

Q. Well, do you now recall Mr. Dennis?

A. I can't say yes. There was someone, and I can't  
recall if his name was Dennis or what took place at that  
time.



Q. How about Mr. Gorson, do you remember him? Another attorney in Delaware County.

A. Associated with the association, was he?

Q. Well, did Mr. Gorson ever represent you?

A. I don't know. I don't know the man's name. I never obtained counsel—private counsel from anyone. If it had anything to do—it could have been that someone from the association might have contacted Atlantic, there were a lot of—the association was trying, working for dealers at that time but they were not my counsel, my personal counsel.

Q. How about a Mr. Green. Did he ever represent you?

A. Yes, there was a Mr. Green that I spoke to, but he didn't represent me.

Q. Did he talk to Atlantic?

A. I believe he called them on the telephone and possibly stopped over there, but I mean he just did it as a friend and he told me there was nothing that could be done.

1137 Q. Did you authorize Mr. Green to threaten suit against Atlantic because of price discrimination against you?

A. Not that I recall.

Q. Did you assert a claim against Atlantic on the ground that they had not accorded you as much price protection during the price war as they had other dealers in your area?

A. No. I was concerned only with leaving the station at that time.

Q. Is it not a fact that when Mr. Arnhold came out to see you at your house he said in effect that it was obvious that you and Bill Way and he had not been getting along and it would probably be happier for both of you if the lease was just permitted to expire?

A. He probably did; but he didn't take into consideration my happiness. He made that statement.

Q. Didn't you reply to that and say that you agreed that you had not been getting along with Atlantic because of these price matters and that you might as well just let it ride?

A. There was no question I wasn't getting along with them at all, hadn't been.

Mr. Thompson: That's all.

Mr. Mason: I have no questions.

*Redirect Examination by Mr. Kelaher.*

Q. Mr. Myers, with respect to the model station, 1138 did you request that your station be made a model station?

A. I certainly did not. It was Atlantic's request.

Q. And how many days were involved in changing the station over or in making the station a model station?

A. I would roughly say four or five days.

Q. And was your business disrupted during that time?

A. Yes, particularly the last day. The last day they painted my lifts red and no cars were allowed to come on my lifts that day because they would have left marks on the lifts. So, that's how my business was disrupted.

Q. Were you able to do a normal business on the days immediately prior thereto, when they were renovating the station or whatever they were doing to the station?

A. Fairly so. I mean, there were men trotting all around the place there and I was able to go along fairly well, the last day was the day that I couldn't do a normal business.

Q. Now, did Atlantic compensate you for the lost business or for the time involved?

A. No, and I suggested that, too, at the time, but there was no such thing.

Q. Now, what TBA identification was on the station when it was a model station?

A. Well, that gets back to the question that this gentleman (referring to Mr. Thompson) asked me which I'm not able to say, if it was prior to or after the change-over, 1139 you see, and I wouldn't want to say that, because I feel that it was after but I'm not sure. I can't recall dates for four years, and so it's impossible for me to answer that correctly.

Mr. Kelaheer: No further questions.

Hearing Examiner Kolb: Any further questions?

Mr. Thompson: No, sir.

Hearing Examiner Kolb: That's all, Mr. Myers.

(Witness excused.)

1416

McCawley Building,  
37 Commerce Street,  
Baltimore, Maryland.  
18 November 1957.

Met, pursuant to adjournment, at 11:00 a.m.

1417 Hearing Examiner Kolb: The hearing will come to order.

SAMUEL KRIETE OSBORN was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

1418 *Direct Examination.*

Mr. Correa: Your Honor, before counsel begins his examination of this witness I should like to move that the witnesses—that is, any future witnesses who are known by counsel to be such—be excluded.

Hearing Examiner Kolb: Do you have any witnesses here?

Mr. Kelaher: I think there is one at least, I know. Mr. McMasters, I believe, is here. I don't think there are any other witnesses to my knowledge.

Mr. Correa: I have to rely on your knowledge.

Hearing Examiner Kolb: Do you want Mr. McMasters excused?

Mr. Correa: Yes.

Hearing Examiner Kolb: Counsel has requested that you not stay in the hearing room, Mr. McMasters.

Mr. Correa: Not Mr. McMasters personally, but Mr. McMasters and any other witness.

I have nothing against Mr. McMasters as such.  
(Mr. McMasters left the hearing room.)

By Mr. Kelaher:

Q. Will you please state your full name and home address?

A. Samuel Kriete Osborn.

Q. And your home address?

A. Sykesville, Route 3, Maryland.

1419 Q. Were you at one time employed by Sherwood Brothers, Inc.?

A. Yes, sir.

Q. Would you tell us when you were so employed?

A. Approximately May, 1932, until 1936 of the same month.

Q. In what capacity were you employed by Sherwood Brothers, Inc.?

A. Originally as the third man in the service station operation, and when I finally—in 1936 I was the manager of the station.

Q. Where was the station located?

A. Reisterstown, upon Westminster and Hanover Roads.

Q. After 1936 were you affiliated in any way with Sherwood Brothers, Inc.?

A. I leased the property from them.

Q. Are you referring to that same station location?

A. Same location; yes, sir.

Q. When did your lease begin?

A. The lease began approximately May 1936.

Q. How long did it continue?

A. I was there until May 31, 1956.

Q. When you first leased your station, what brand of TBA did you carry?

A. Firestone.

Q. At any time thereafter were you solicited for Goodyear TBA business by representatives of Sherwood Brothers, Inc.?

1420 A. Yes, sir.

Q. Would you please state when such solicitation was made, and in what manner?

A. In 1937, I think it was, the beginning of it, the first time that I noticed any great amount of sales on Goodyear, was a fellow by the name of Rhodes, I think his name was, a fellow by the name of Floyd Rimbey came out to see me one day.

Mr. Correa: If your Honor please, I take it it is understood that we have a continuing objection to this line of proof, on the ground that it is now patent that it does not involve transactions between Goodyear and Atlantic, the only two respondents named in this complaint—or rather I should say in the amended complaint.

Hearing Examiner Kolb: I don't know. He is being asked about Goodyear calling on him. I don't know what he will testify to. I assume this man is an Atlantic dealer, is that right?

Mr. Kelaher: No. This man is a Sinclair dealer.

Mr. Correa: Actually, all that has been proved up to the moment is that he is a dealer of some outfit called Sherwood Brothers, Inc.

Mr. Kelaher: Yes, your Honor, and the record will show that Sinclair Refining Company purchased Sherwood Brothers, Inc. during this period during which Mr. Osborn will testify, and that on or about January 1, 1956 Sherwood Brothers, Inc. was merged with Sinclair Refining Company and is now known as the Sherwood Division of Sinclair Refining Company.

Mr. Correa: It may be, if your Honor please, that the record will show what Mr. Kelaher says it will show. But



my point is that it doesn't show any such thing now. I object to the proffered proof.

Mr. Kelaher: Your Honor, I beg to differ with learned counsel because we have an exhibit in—we requested counsel for Goodyear to furnish copies of all oil companies with whom Goodyear had sales commission plan agreements, and we have here identified in the record as Commission Exhibit 67-A and B a copy of the contract between Sherwood Brothers, Inc., Baltimore, Maryland, and Goodyear Tire and Rubber Company, dated July 14, 1937.

We also have a copy of a plan dated March 1, 1944 between Sherwood Brothers, Inc. and Goodyear Tire and Rubber Company, Inc.

Hearing Examiner Kolb: As long as this man is a Sinclair dealer the testimony will be received subject to a motion to strike by Atlantic.

Mr. Correa: My point is, if your Honor please, it is not clear what his status was at the time of which he is testifying, which I understand to be 1936.

Mr. Kelaher: 1937 now.

Mr. Correa: At least it is one year closer.

1422 Mr. Kelaher: Since he became a lessee dealer.

Mr. Correa: It is still pretty far waay. My understanding is that the exhibit to which counsel referred us, 67-A, is a copy of a letter which I understand was never executed. However, I will not follow counsel into the error of letting my statement substitute for proof. I will simply say that the physical exhibit referred to does not indicate that it was executed. As a matter of fact, it indicates the opportunities, because there is a note on it in substance saying that this will not be signed.

Hearing Examiner Kolb: I don't know what the hassle is about.

Mr. Witness, were you a Sinclair dealer in 1936?

The Witness: Yes, sir.

Hearing Examiner Kolb: And you have been a Sinclair dealer all the way up to 1956?

The Witness: Yes, sir.

Hearing Examiner Kolb: That is all.

Mr. Correa: I have the same objection, if your Honor please, to the offered proof on the grounds that I have stated.

Hearing Examiner Kolb: I will admit it, subject to a motion to strike.

Mr. Thompson: As to Atlantic, so that there will be a continuing objection on the part of Atlantic, a continuing motion will not be necessary?

1423 Hearing Examiner Kolb: No.

Mr. Correa: I take it the same is true as to Goodyear?

Hearing Examiner Kolb: Let's see when we get to it.

Mr. Correa: All I want is guidance as to whether I should make continuing objections or whether it is understood that I have an objection to the proof that is being offered.

Hearing Examiner Kolb: The testimony offered as to other oil companies will be subject to a motion to strike by Atlantic. The testimony offered as to other suppliers, as to Firestone, will be subject to a motion to strike by Goodyear.

Mr. Correa: My point, if I may insist, is that I would wish the record to show that the testimony is offered subject to our objection, whatever disposition your Honor may make of our objection. I want the record to show that we do object to it.

Hearing Examiner Kolb: Then make the objection and I will rule on it.

Mr. Correa: All right.

Mr. Thompson: Does that apply to Atlantic, too? I will make a formal objection if you like. I will object, sir,

to any testimony by this witness concerning the details, operation, or competitive effects of the overriding commission contract.

Between respondent Goodyear and Sherwood or 1424 Sinclair or Shell or any other oil companies: I understand, sir, that under the Commission's ruling any such testimony would be taken subject to my objection and subject to my motion to strike.

Hearing Examiner Kolb: No. Your objection will be overruled as to the oil companies.

Mr. Thompson: And received subject to my motion to strike.

Hearing Examiner Kolb: Received subject to a motion to strike on the part of Atlantic. Not received subject to a motion to strike on the part of Goodyear.

Mr. Thompson: I am speaking only for Atlantic, and have been for about a year.

Hearing Examiner Kolb: The motion by Goodyear will be overruled. The motion by Atlantic--the testimony will be received subject to a motion to strike by Atlantic.

Mr. Kelaher: If there are no further motions or rulings, we will get back to the witness.

By Mr. Kelaher:

Q. Mr. Osborn, you stated that a Mr. Rhodes and Mr. Rimbey called on you. Would you state the substance of the conversation?

Mr. Correa: Has a date been fixed, may I inquire, your Honor?

Mr. Kelaher: I think the date has been fixed.

1425 By Mr. Kelaher:

Q. Would you also restate the approximate time when the conversation took place, and the substance of the conversations?

A. It was approximately early 1937.

Q. Would you state the substance of the conversations?

Mr. Correa: I object, if your Honor please, to the question on the ground that no proper foundation has been laid. There is not even the proverbial scintilla of evidence that there was any sales commission plan in effect in 1937. And I am advised that the fact is there was not. But again I would point to the fact that the record shows no proof of that.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Kelaher:

Q. Go ahead, Mr. Osborn.

A. Mr. Rhodes, and Mr. Rimbey, called on me one day. And they were very insistent that I take on Goodyear tires, batteries and accessories, and insisted for three or four hours until I finally got mad and told them to get out.

Q. And at that time what brand of TBA were you carrying?

A. Firestone.

Q. Did you continue to carry Firestone TBA?

A. Yes, sir.

Q. At that time were you a distributor for Firestone TBA?

A. Yes, sir.

1426 Q. Did you continue to be a distributor for Firestone TBA for any period of time?

A. Still am.

Q. You still are?

A. Yes.

Q. At any time after this incident were you requested to purchase Goodyear TBA?

A. Yes, sir.

Q. Would you please state the details of any incident thereafter.

Mr. Correa: Could we have the date, too, please?

Mr. Kelaher: He hasn't testified as to that yet.

A. I wouldn't want to give any specific dates because it was I would say random from calls that Sherwood salesmen would make, also Goodyear salesmen. They were asking me to handle Goodyear tires and accessories.

Mr. Correa: I move to strike the last answer on the ground that the record shows that there was no sales commission plan in effect with the Sherwood Brothers, Inc. at any date prior to March 1, 1944.

Mr. Kelaher: Were any—

Mr. Correa: I have a motion pending if you would give me the courtesy of getting a ruling.

Mr. Kelaher: If you would give me the courtesy of getting my examination we can get some of these dates.

1427 Mr. Correa: I would like a ruling. This is orderly procedure.

Hearing Examiner Kolb: Motion denied.

By Mr. Kelaher:

Q. Were any such calls made during the period March 1—beginning after March 1, 1944 through the years 1944, 1945 and so on?

A. Yes.

Q. Were such calls made in 1946? Was such solicitation made in 1946?

A. 1946? I wouldn't want to say definitely, one way or the other.

Mr. Correa: I move to strike that answer.

Hearing Examiner Kolb: Denied.

By Mr. Kelaher:

Q. Were any calls made in or about 1948?

A. Yes, sir.

Q. And prior thereto, in 1947, were any such calls made to your knowledge?

A. Yes.

Q. Did you on or about 1948 receive a letter of cancellation from Sherwood Brothers, Inc.?

A. Yes, sir.

Q. Do you recall the date of that letter, approximately?

A. April 8, I think.

1428 Q. Mr. Osborn, I show you a document and ask you to state what it is?

A. This is a letter of cancellation.

Q. What is the date on that?

A. April 5.

Q. Who is it from?

A. It is from Sherwood Brothers, Inc.

Q. To whom is it addressed?

A. S. Kriete Osborn, Hanover and Westminster Pikes, Reisterstown, Maryland.

Mr. Kelaher: Your Honor, I ask that the reporter identify this as a Commission exhibit.

Mr. Correa: Is it being offered in evidence or simply marked for identification?

Hearing Examiner Kolb: He has asked that it be identified at the present time.

(The document referred to was marked Commission Exhibit 328 for identification.)

Mr. Kelaher: Your Honor, I would like at this time to offer a photostatic copy of Commission Exhibit 328 in evidence.

Mr. Correa: The proffered exhibit is objected to, if your Honor please, on the ground that it doesn't have to do with the issues arising under the amended complaint herein.

Hearing Examiner Kolb: The objection will be  
1429 overruled. The document will be received in evidence as Commission Exhibit 328.



(The document heretofore marked COMMISSION EXHIBIT 328 for identification was received in evidence.)

Mr. Thompson: Subject, of course, to Atlantic's motion to strike.

Hearing Examiner Kolb: Subject to a motion to strike by Atlantic.

By Mr. Kelaher:

Q. Mr. Osborn, after you received the letter of cancellation dated April 5, 1948, did you have any conversation with representatives of Sherwood Brothers, Inc.?

A. Yes, sir.

Q. Would you please give us the approximate time and the substance of any such conversations?

A. It was a few days after I got the lease cancellation. I was disturbed about it, and I wanted to find out what it was all about. I called up the company and finally got an interview with Mr. Weller, and Mr. McCauley. I went down to see them. I went down to Sherwood's office to see Mr. Weller and Mr. McCauley about keeping my lease. I asked them why I was getting a lease cancellation. They told me that I wasn't doing the right things by them, that Goodyear tires, batteries, and accessories were just as much Sinclair products, just as important to the company, as Betholine gas, Sinclair gas whatever they were marketing, and Opaline oil. And I promised to go along with their wishes. I gave them an order for Goodyear merchandise. In a few days I had a new lease.

Q. You say you gave them an order for Goodyear TBA merchandise. Do you recall the approximate amount of the order.

A. A thousand or more dollars worth.

Q. What products did you order?

A. Tires, batteries.

Q. Did you order any accessories?

A. I don't recall. It could have been.

Q. Prior to that conference with Mr. Weller and Mr. McCauley, what TBA products were you carrying in your Sinclair station?

A. Always Firestone.

Q. And prior to that time had you been buying any Goodyear TBA?

A. Some, but not much.

Q. And after that time did you begin to purchase Goodyear TBA?

A. Some.

Q. You stated you placed a thousand dollar order, is that correct?

A. That is correct.

Q. Would that be considered a substantial order?

A. Averagely good order, yes.

Q. After the reinstatement of your lease in 1948 1431 were you solicited for Goodyear TBA business at all?

A. Yes, sir.

Q. By whom?

A. By the Sherwood salesmen, and Goodyear salesmen.

Q. Do you recall the name of the Sherwood salesman?

A. No, sir. There is quite a few of them.

Q. Do you recall the name of the Goodyear salesmen?

A. Not at that time; no, sir.

Q. Who were your purchases of Goodyear TBA made from?

A. From the Goodyear district.

Q. The Goodyear district office?

A. Yes, sir.

Q. Where is that located?

A. Mount Royal Avenue.

Q. At that time or thereafter did you purchase any Goodyear TBA from Brooks-Huff Tire Company?

A. I could have, but it would have just been a matter of pickups.

Q. Your primary supply point was Goodyear district office?

A. Until 1956.

Q. What happened in 1956?

A. On January 1, 1956 I was notified that I was no longer a distributor for Goodyear, that I would get all my tires and batteries from Brooks-Huff. I did buy accessories still from the Goodyear district.

1432 Q. You stated that you were notified. You were notified by whom that you were no longer—

A. The Sherwood salesman.

Q. When did you begin to be a Goodyear district buyer or supplier?

A. A district distributor?

Q. Yes.

A. I can't exactly remember the time. I think it was approximately '46, sometime like that.

Q. Did you at any time purchase TBA from Baltimore Gas Light Company?

A. Yes, sir.

Q. What products did you purchase from Baltimore Gas Light Company?

A. Major items would be Walker oil filters.

Q. Did you purchase belts?

A. Gates belts, and miscellaneous.

Q. What brand of oil filter is in the Goodyear TBA line?

A. The one that I know of particularly is Purolator.

Q. Were you at any time asked to purchase Purolator filters by either the Goodyear salesman or Sinclair salesman?

A. Yes, sir.

Q. And when was such solicitation made?

A. From the time that the new station was built I was asked to handle it.

1433 Q. When was the new station built?

A. I think it was finished and I moved into it the latter part of 1954, I think.

Q. Was that—when you say new station, was that a remodeling or renovation of your old station, or a new site?

A. New station at the same place.

Q. At the same site?

A. Yes, sir.

Q. Beginning then at that point, who solicited you for Purolator filters?

A. Sherwood, or Sinclair salesman.

Q. What was his name?

A. Reymond Evans.

Q. Do you recall any specific incident in connection with such solicitation?

A. Well, what decided me to go along with them on Purolator filters was that Elmore Evans made a visit to my station.

Q. Who is Elmore Evans?

A. Sherwood-Sinclair employee. I don't know what capacity.

And he told me if I would change over to Purolators they would take all of the Walker filters that I had and would change them—exchange them for Purolator.

I had quite a few. Some of them were slow movers, so I made the deal.

Q. What price were you paying—how did the 1434 prices of the two brands compare?

A. I was classified as a distributor for Walker. The price I was paying was 50, and ten off of retail list.

Q. What discount were you getting on Purolator filters?

A. They offered me 40, and I asked them about being competitive, and they said they had no price like that to offer me. In spite of that, I still gave them a verbal order for the filters.

Q. You gave them a verbal order.

You mentioned in your testimony that you were told that the Walker filters would be replaced?

A. That's right.

Q. Were such Walker oil filters ever replaced?

A. No, sir.

Q. Do you have any knowledge as to why they were not replaced?

A. I attributed—

Mr. Correa: I object to that question, if your Honor please.

Hearing Examiner Kolb: The objection will be sustained.

By Mr. Kelaher:

Q. Were you contacted thereafter with respect to Purolator filters by any representative of the Sherwood Company or Sinclair Company?

A. After that? No, sir.

1435 Q. After you gave the verbal order?

A. No, sir.

Q. Did a Mr. McCauley ever contact you in connection with this matter?

A. He called me up over the 'phone.

Q. Was this after you placed your verbal order?

A. Yes, sir.

Q. What did he ask you? What was the substance of the conversation, and when did it take place?

A. He asked me if I told anyone that they were forcing me to take on Purolator-filters. I told him that I had not.

Q. Did you ever inquire as to why your Purolator order was never filled?

A. Yes, sir.

Q. Who did you inquire of?

A. I called up to talk to Mr. Weller. Mr. Weller wasn't

available, so I talked to Elmore Evans, and asked him where the shipment of filters were that I had ordered. He said they didn't want any part of me in the filters.

Mr. Correa: Could I have the last part read?

(Answer read.)

By Mr. Kelaher:

Q. Did he indicate why?

A. No. He said if I wanted the filters I would just have to fill in.

1436 Q. Fill in with what?

A. Purolators.

Q. You stated earlier that you purchased Gates fan belts from Baltimore Gas Light Company?

A. Yes.

Q. Did you purchase them for any period of time? Were you a substantial purchaser of Gates fan belts?

A. I guess I was better than average.

Q. Were you ever solicited to buy Goodyear fan belts?

A. Yes, sir.

Q. When did such solicitation take place?

A. It was always the same time that the filters that they solicited.

Q. Is this in or about 19—late 1955, I believe you testified.

A. That's right.

Q. Would you please state the substance of any conversations you had regarding the solicitation of Goodyear fan belts?

A. After the filter incident there was a Goodyear man come out to me to change the belts, and I told him, No, I wasn't going to change the belts at that time. I heard enough about the filters. So I didn't give him permission. But I said that I would go along with him and change them at a later date.



Q. And did the time ever come when you did change to Goodyear fan belts?

1437 A. I wasn't there that long.

Q. Did you ever have any conversations with a Mr. DeHoff, of Sinclair, concerning TBA?

A. Yes, sir.

Q. Would you please state the approximate time of such conversations and the substance of the conversations?

A. It was right after I moved into the new station. I don't know whether it was late 1955 or early 1956. But it was after I moved into the new station.

Q. I believe you testified earlier that the station was completed in 1954.

A. Then it could be 1954-55. I don't remember the exact date. I know it was in the new station, right after I moved into the new station.

Q. And—

A. He come out to see me about Goodyear merchandise. He said he had spent a lot of money—the company had spent a lot of money. I told him I understood that and I wanted to go along with them the best I could. And he said it is important for you to have Goodyear merchandise here and sell as many of them as you can. I said that I would. I would put them in and display them and if the public preferred Goodyear, they would be sold with Firestone.

Q. At that time did you continue to sell Firestone TBA?

A. Yes, sir.

1438 Q. Did he make any comments at all with respect to your sale of Firestone TBA?

A. No. He didn't make any comments about it particularly. I made a few comments with him. It was a general conversation. In fact, it lasted three or four hours. In fact, it was a couple of times he came out to see me.

Q. Did he comment on your purchases of Goodyear TBA with respect to other Sinclair dealers?

A. He didn't particularly, but I told him, I said, "I don't see why it should be such a great issue because I was handling enough Goodyear merchandise or equal or better than the average station you have."

I said, "If I didn't sell any tires or any batteries, then it wouldn't be an issue, so why should it be an issue just because I am a good dealer?"

And he said, "I understand that."

Q. Did he at any time ask you to increase your purchases of Goodyear TBA?

A. He didn't say increase. He wanted me to handle more Goodyear TBA.

Q. Which would indicate an increase, would it not?

A. That's right.

Q. Did you have any conversations with the salesman for Baltimore Gas Light Company with respect to Walker filters or Gates fan belts?

1439 A. We talked about it a lot, naturally. But—

Mr. Correa: I object, if your Honor please, to the witness going beyond a responsive answer to this question. I don't mind him saying whether he had conversations or didn't, yes or no. But I will object to the substance of any such conversations.

Hearing Examiner Kolb: The objection will be sustained.

By Mr. Kelaher:

Q. Were you advised at any time by either a Goodyear or Sinclair salesman with respect to TBA quotas?

A. No, not as far as I was concerned. The salesman showed me where he had quotas.

Q. Which salesman was that?

A. Most any salesman that they have had. You see, they change salesmen at different times.

Q. Are you referring to the Sinclair salesman or the Goodyear salesman?

A. Sinclair salesman.

Q. When you say he showed you quotas, did he show you a quota for you specifically?

A. Well, it wasn't a quota for me. He was showing me the activity against the previous year, and so on.

Q. Did you at any time purchase DuPont chemicals, as they are called, DuPont accessories?

1440 A. Yes, sir.

Q. Who did you purchase such accessories from?

A. I purchased the last year that I was there mostly from Sinclair.

Q. And prior to that time did you purchase DuPont from any other supplier?

A. Yes, sir.

Q. Who?

A. Firestone; Baltimore Gas Light.

Q. Was your DuPont business solicited by Sinclair or Goodyear?

A. It was solicited with their general line. That was just one of their accessory products.

Q. At any time were you called on by DuPont salesman and a Sinclair salesman jointly?

A. They both happened to be there at one time.

Q. When was that?

A. That was in 1956.

Q. What transpired at that time?

A. Well, the DuPont salesman was telling me about their price schedule, that I could make an extra ten for so many cases, free goods, stuff like that, and I didn't know anything about it. I had just gotten an order from Sinclair. I don't know whether you classify him as a salesman or a missionary. He travels with different suppliers. I have had him travel with Sinclair salesmen.

1441 Q. Do you recall his name?

A. No, I don't recall his name. This particular time he was with an R. J. Loock representative. When he was telling me about this, I hadn't gotten the advantage of it, and all I had to do was buy two or three more cases and I could have an extra ten or extra five, or whatever it was that was passed. And I said, "Meet Mr. Evans. He is the man I bought it from. Explain it to him."

He went over to talk to Mr. Evans and Mr. Evans was very indignant. He said he had enough to bother about without bothering about things like that. He said I was his customer anyway, so that was it.

Q. And Mr. Evans was the Sinclair salesman?

A. Yes, sir.

Mr. Correa: May we have Mr. Evans' first name identified? I understand there are two.

The Witness: Raymond.

By Mr. Kelaher:

Q. You say that was it. Then who did you place your order with?

A. I placed my order with him.

Q. With Mr. Raymond Evans?

A. He already had the order and I placed another order.

Q. You testified that you were a Sinclair dealer until sometime in 1956. What transpired in 1956?

1442 A. I got an order of cancellation May 1, 1956.

Q. Did you at that time confer with Sherwood officials or Sinclair officials concerning the matter?

A. I got in touch with them and asked them so that I could see them, and they gave me—let me come down to see them. They gave me a couple of hours to come down to see them.

Q. Did you go down to see them?

A. I went down to see them the following week.

Q. Who did you confer with?

A. I talked with Mr. Weller and Mr. Stuller. And Raymond Evans was there.

Q. What was the substance of that conference?

A. I went down to find out what I could do to keep my business. They told me they didn't know what I could do. There wasn't anything I could do; that they lost \$1,500 on the location for 1955; they had somebody else to take over the location they felt could do a better job.

Q. Did they give you any other reason for the cancellation?

A. No other reason other than I wasn't doing enough business. They surveyed—they said they surveyed the location for 40,000 and I hadn't done any more than 20, and it was costing them money, and they felt that they could do better by another operation.

Q. Up until—

Mr. Correa: Excuse me. The witness said 30,000, 1443 and 20,000. I would like to inquire whether he meant dollars or gallons.

The Witness: Gallons.

By Mr. Kelaher:

Q. Is that gallons?

A. Gallons of gasoline, sir.

Q. Is that per month, or per year?

A. Per month.

Q. Do you know who succeeded you as lessee of your station?

A. Messrs. Paul and Norman Koenig.

Q. And did you ever have conversations with them or anyone connected with them concerning the matter?

Mr. Correa: I object to the witness giving any more than a responsive answer, yes or no.

Hearing Examiner Kolb: You may answer yes or no.

A. You will have to define that question. I don't know what you mean.

By Mr. Kelaher:

Q. Did you at any time ever talk to the Koenig brothers or anyone connected with them with respect to their taking over the Sinclair station that you formerly leased?

A. Other than—

Mr. Correa: I would like to have the witness answer in the first instance yes or no, as to whether he had such conversation.

1444 The Witness: Yes, I have.

By Mr. Kelaher:

Q. With whom did you have such conversation?

A. About the lease?

Q. Yes.

A. Ernest Koenig. That is their uncle.

Q. What is the substance of the conversation between you and Ernest Koenig?

Mr. Correa: That is objected to.

Hearing Examiner Kolb: Sustained.

By Mr. Kelaher:

Q. When did such conversation take place?

A. After I got my lease cancellation. Everybody knew that I had a cancellation.

Mr. Kelaher: Your Honor, do I understand your ruling to be that he cannot testify concerning the conversation he had as to his lease cancellation?

Hearing Examiner Kolb: He is not talking about the lease cancellation. He is talking about a conversation with the man who took over.

Mr. Correa: The uncle of the man.



By Mr. Kelaher:

Q. Prior to your lease cancellation had you increased the gallonage at your service station?

A. Yes, sir.

1445 Q. Would you please state what the approximate increase was in gallons per month?

A. I would say 10-15 percent over the previous year.

Q. Would you explain that? You say you increased it by 10 or 15 percent. Over which year?

A. To give you a picture of what it was, in the process of construction the gallonage got down to practically nothing. When I opened the station I did around 12 or 14 thousand the first month, and each month afterward I increased my gallonage, month after month.

Q. Beginning from the time in or about 1954-55 when the new station was completed, is that right?

A. Yes, sir.

Q. What advertising signs did you carry, if any, in your station at the time of your cancellation?

A. Nothing but Goodyear.

Q. Nothing but Goodyear?

A. Yes, sir.

Q. Was there a time prior to that when you carried any other brand of signs?

A. Yes. I used to advertise Firestone.

Q. When did you stop advertising Firestone?

A. I used to have a sign out on the light pole, just Firestone. It was taken down and Goodyear was put up.

Q. It was taken down when?

1446 A. I guess in 1948, '47, something like that.

Q. Who removed the sign?

A. A Goodyear sign man, or the Sinclair painters. I think it was.

Q. Was that sign replaced with a Goodyear sign?

A. Yes, sir.

Q. And did you request such a change?

A. No.

Q. Did you honor Sinclair credit cards at your station?

A. Yes, sir.

Q. What TBA products were honored on those credit cards?

A. We were only supposed to put Goodyear on them.

Q. Was that so stated on the credit card?

A. Yes, sir.

Mr. Kelaher: May we have a short recess, your Honor?

Hearing Examiner Kolb: Yes.

(Thereupon, a short recess was taken.)

1447 Hearing Examiner Kolb: The hearing will come to order. You may proceed.

By Mr. Kelaher:

Q. Mr. Osborn, I believe you testified as to who succeeded you at the station where you were a leasee dealer. Would you give us the names of those operators again?

A. Messrs. Paul and Norman Koenig.

Q. Do you know when the Koenig Brothers were approached by Sinclair with respect to take over the station?

Mr. Correa: I object, if your Honor please?

The Witness: No.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Kelaher:

Q. Are the Koenig Brothers the present operators of that particular service station?

A. No, sir.

Q. When did they discontinue operations approximately?

A. I think the last part of July.

Q. What year?

A. This year.

Q. Do you have any knowledge as to the gallonage they were pumping during their term as leasees?

Mr. Correa: I object if your Honor please unless it be established that this is somehow competent proof.

1448 . Hearing Examiner Kolb: Did the witness say he knew or didn't know?

The Witness: The man objected.

By Mr. Kelaher:

Q. Just answer.

A. Specific gallonage, I don't know.

Q. Do you know the name of the present operator of that service station?

A. His name is Sergi. I think that is the way he spells it.

Q. During the period when you were a Sinclair dealer, did you attend dealer meetings?

A. Yes, sir.

Q. And who attended such meetings?

1449 A. Dealers.

Q. Who else attended them besides dealers?

A. Suppliers.

Q. Were they ever attended by a Goodyear TBA man?

A. Yes, sir.

Q. Do you recall whether—would you specify a Goodyear man or clarify? Are you referring to someone from the particular district store or district office?

A. It was the territory salesman who was generally there. Sometimes the district manager.

Q. And were any comments made with respect to TBA at such meetings?

A. Yes, sir.

Q. Were any comments made with respect to Goodyear TBA at such meetings?

A. Yes, sir.

Q. How often were such meetings held, Mr. Osborn?

A. Generally in the spring of the year.

1450 Q. Do you recall any specific statements made by a Goodyear representative at any of such meetings?

Mr. Correa: Has the meeting been identified?

Mr. Kelaher: At any such meetings.

Mr. Correa: I would like to have a meeting identified.

Hearing Examiner Kolb: That is a preliminary question.

Mr. Kelaher: Yes, sir.

Hearing Examiner Kolb: The witness may answer.

The Witness: It would be hard for me to remember specific statement at meetings.

By Mr. Kelaher:

Q. Do you recall any general statements made at any of such meetings, and if so, please identify the meeting?

A. They were sales meetings, and it was general talks by different officials of the company based around how we would sell more merchandise, and giving us reasons how to sell them, and ideas and so on.

Q. Would such a—was it normal for such a sales talk to be made at the meetings you attended over the course of years?

A. That is what they were, were sales meetings. It was product knowledge and different things.

Q. And just to clarify it, a Goodyear representative participated in such meetings, is that correct?

A. As a speaker?

1451 Q. As a speaker.

A. Not particularly as a speaker.

Q. Did they participate in any other way?

A. Well, to get acquainted with dealers.

Mr. Kelaher: No further questions.

*Cross-Examination by Mr. Correa.*

Q. Mr. Osborn, what are you doing now, sir?

A. Sitting here.

Q. Fair enough. What is your present occupation.

A. Service station operator.

Q. For whom do you operate a service station?

A. For myself.

Q. What brand of gasoline do you sell?

A. Shell.

Q. Do you lease your station from Shell?

A. I guess you would say Yes.

Q. You would have to do the same, so I don't know.

A. It is a complicated deal.

Mr. Kelaher: I object to this line of testimony, your Honor. It is going beyond the scope of the direct.

Mr. Correa: It seems to me it is clearly proper cross. I don't know how to deal with the objection because I can't understand any basis for it.

Hearing Examiner Kolb: I don't see the materiality of anything other than whether he is a Shell dealer 1452 now. And what his present arrangement is with Shell I don't think is material.

Mr. Correa: I wish to bring out whether or not he leased it, and apparently he does. Beyond that I have no interest in his present arrangement with Shell.

By Mr. Correa:

Q. Now, sir, when your arrangement with Sinclair terminated in May, 1956, did you have opportunity to lease service stations from other oil companies other than Shell or Sinclair?

Mr. Kelaher: Objection.

Hearing Examiner Kolb: Overruled.

The Witness: I imagine I could if I wanted to go just any place to lease them.

By Mr. Correa:

Q. Were you not in fact approached by several other oil companies?

A. Not in Reisterstown.

Q. Were you approached anywhere by several other oil companies at that time?

A. Yes, sir.

Q. Would you name the companies in question?

A. Cities Service.

Q. Any others?

A. No.

Q. How about the Texas Company?

1453 A. No, sir.

Q. American Oil Company?

A. No, sir.

Q. Gulf?

A. No, sir.

Q. Atlantic?

A. No, sir.

Q. Did you have any conversations with representatives of those companies or any of them?

A. Had conversations with them, yes, sir.

Q. Did any of them offer you a lease?

A. There is only one specific company that offered me a station as a lease. These other companies that you are talking about were contacting me pertaining to a lease that I had.

Q. You were asked by counsel supporting the complaint as to whether you sold Goodyear TBA in 1946. And I think you said you might have had calls for it, and I made a note that you said, "I wouldn't want to say definitely." Do you remember that answer?

A. What was that, sir.

Q. I say you were asked as to whether or not you sold Goodyear TBA in 1946, on your direct examination. And



I understood your answer to be that you may have, if you had had calls for it, and you added, "I wouldn't want to say definitely." Do you remember making that answer?

1454 A. That's right.

Q. It is the fact, is it not, that in the years from 1946 up to the date of your termination of your arrangements with Sinclair, you purchased the highest amount of Goodyear TBA in the year 1946?

A. I wouldn't know, sir.

Q. You don't remember that at all?

A. No, I wouldn't say.

Q. Do you remember buying \$7,200-odd dollars worth of Goodyear Tires from the Goodyear District in 1946?

A. It is very possible. I don't know.

Q. You have no recollection?

A. I say I don't remember specific amounts.

Q. You recall the tires were in somewhat short supply in 1946?

A. Yes.

Q. Didn't you recall that the Goodyear District had helped you in getting tires?

A. Helped me get tires.

Q. Yes, sir.

A. I don't say they helped me get tires, no.

Q. Do you recall getting tires through the Goodyear District?

A. Yes, sir.

Q. Did you also get them from some Goodyear stores?

A. Yes, sir.

Q. You referred to an incident in 1948 and I ask you, sir, is it not a fact that your total TBA purchases from Goodyear in the following year—1949—were less, by a considerable amount, than your total purchases of Goodyear TBA in the preceding year 1947?

A. I wouldn't know, sir.

Q. You don't recall that?

A. No, sir.

Q. Do you recall that in 1950 your TBA purchases from Goodyear were still less than they were in 1949?

A. No, sir.

Q. Do you recall that in 1951 your TBA purchases for Goodyear were less than they had been in 1949?

A. I wouldn't know, sir.

Q. As a matter of fact, in every year through 1953 your TBA purchases from Goodyear were less than they were in 1949; do you recall that?

A. I wouldn't know, sir.

Q. During the years from 1946 to 1956 you were a Firestone distributor, were you not?

A. Yes, sir.

Q. And did you maintain a place of business where you carried on your business as a Firestone distributor?

A. Yes, sir.

Q. Is that separate and apart from your service station?

A. Yes, sir.

1456 Q. Where was that with relation to the service station?

A. Adjacent to the station.

Q. What did that place of business consist of, sir?

A. Complete home and auto supplies.

Q. Was it a store?

A. Yes, sir; a store.

Q. And you carried tires in there?

A. Yes, sir.

Q. Batteries?

A. Yes, sir.

Q. And various kinds of accessories?

A. Yes, sir.

Q. And they were all Firestone?

A. Yes, sir.

Q. And that was true throughout this entire period? beginning with the year 1946?

A. Beginning in 1946, yes, sir.

Q. How long actually before that did it begin—did you begin to maintain that place of business?

A. That place of business?

Q. Yes.

A. I think it was 1946, sir.

Q. Did you have another Firestone store somewhere else?

A. Yes, sir. I had an interest in it.

Q. Where is that?

1457 A. Westminster.

Mr. Kelaher: I believe that is in Maryland, too, isn't it?

By Mr. Correa:

Q. It is in Maryland, is it not?

A. Yes, sir.

Q. The station which you are presently operating, sir, where is that situated in relation to the station you operated under lease from Sinclair in 1956?

A. The address is 2022 Main Street. It is toward Baltimore about a half block.

Q. What I was interested in, I gather it is about a half block from your prior station?

A. Yes, sir.

Q. You were asked about Sinclair credit cards?

A. Yes, sir.

Q. According to my note you stated in response to a question concerning the merchandise which could be put on, I believe was your expression, "We were only supposed to put Goodyear."

A. Yes, sir.

Q. What, in fact, did you do?

A. Sir?

Q. What was your actual practice as opposed to what you were supposed to do?

A. Practice?

1458 Q. Yes.

A. It was to stay as close to that as we possibly could.

Q. How close is that, sir?

A. I would say that they weren't always Goodyear Firestone put on the credit card.

Q. Were they sometimes Firestone?

A. Yes, sir.

Q. You told us that at the time you received the notice of cancellation of your lease in May, 1948, you had some discussion with Sinclair officials and they discussed your gallonage; is that correct?

A. Did you say prior or after?

Q. I said at the time of.

A. It was after I got my lease and cancellation; yes, sir.

Q. You also indicated that your gallonage in the station had been increasing prior to that time?

A. That's right.

Q. It is a fact, is it not, sir, that your gallonage at no time reached—that is, your annual gallonage—at no time, after 1946, reached the level it did in 1946?

A. I wasn't there to reach it, sir. Forty-six?

Q. 1946.

A. Oh, I was thinking of 1956. What did you say?

Q. Isn't it a fact that your annual gallonage in 1946 was higher than your annual gallonage at any time thereafter?

1459 A. That could be, sir. I don't know.

Q. You have no recollection?

A. No, sir.

Q. I suggest to you that your annual gallonage in 1946 was 258,955, and ask you does that refresh your recollection?

A. I never bothered about that, sir.

Q. Now, sir, I think you testified that there was some work done on your station by Sinclair in, I think you said it was completed in 1954, is that correct?

A. I think that is the year, yes, sir.

Q. Did that work involve rather extensive modernization of the station?

A. Yes, sir.

Q. Do you know how much Sinclair spent on that?

A. No, sir.

Q. Was the modernization of your station, which was completed in 1954, done at your request, sir?

A. Done at my request?

Q. Yes.

A. I had nothing to do with it, sir.

Q. You made no such request to Sinclair?

A. I may have made the request, but that had no bearing on it, sir.

Q. Let's take it in two parts. You did, in fact, make a request to Sinclair to modernize your premises prior 1460 to the time when they actually did modernize them?

A. They weren't my premises.

Q. The premises you leased.

A. I leased the station from Sinclair.

Q. And there came a time when Sinclair modernized the station, is that right?

A. That's right.

Q. Before they modernized the station, did you ask that the station be modernized?

A. It wasn't up to me to ask.

Q. Did you or didn't you?

A. We talked in general conversation about it, it would be nice to have a new station.

Q. You did ask?

A. I never asked in the way you are implying I asked.

Q. I mean in any way?

A. No.

Q. You did not in any manner or shape or form ask that the station be modernized?

A. No, because it couldn't be done that way.

Q. All I am interested in is asking did you or didn't you?

A. No, I never asked anybody to do anything like that.

Q. But you did have conversation about it?

A. Why, sure.

Q. In which you indicated—

1461 A. Wishful thinking. It would have been nice.

Q. And it ultimately was modernized?

A. Yes, sir.

Mr. Correa: I have no further questions.

Mr. Thompson: Mr. Examiner, this testimony of Mr. Osborn was taken, of course, subject to Atlantic Refining Company's motion to strike. I assume you do not wish me to press that motion now, even though the testimony related solely to the sales commission plan between Good-year and—

Hearing Examiner Kolb: That we will take up at the close of the hearing.

Mr. Thompson: By asking Mr. Osborn a couple of questions, I am of course, not waiving the eventual motion to strike.

Mr. Correa: I have just one more question if I may.

By Mr. Correa:

Q. Mr. Witness, you are engaged in suing Sinclair at the moment, are you not, sir?



A. Yes.

Mr. Correa: That is all that I have.

By Mr. Thompson:

Q. Mr. Osborn, I represent the Atlantic Refining Company in this case and not Goodyear.

You know, of course, sir, that Atlantic has a sales commission plan with Firestone in the Baltimore area.

1462 Mr. Kelaher: Objection, your Honor. I don't know how the witness would be informed as to that.

Hearing Examiner Kolb: Objection overruled. If you know.

The Witness: Did I know that?

By Mr. Thompson:

Q. Yes.

A. By reading it in the papers, or something like that.

Q. I beg your pardon. I was under the impression that you had acted as a supply point for Firestone in handling one of the Atlantic leasee stations out at Reisterstown. Am I mistaken?

A. I was the supply point for all the stations.

Q. Yes. For Firestone, including, in particular, the Long Station at Reisterstown, am I not correct?

A. Yes.

Q. Mr. Osborn, you being a Firestone distributor and dealer for about 25 years—haven't you been?

A. Yes.

Q. It is a good company, is it not?

A. Yes, sir.

Mr. Kelaher: Objection.

Hearing Examiner Kolb: Overruled.

Mr. Thompson: Perhaps you will stipulate it is a good company, Mr. Kelaher, and I won't have to ask these questions.

1463 Mr. Kelaher: I am not sure.

By Mr. Thompson:

Q. Didn't you recently win quite a sensational nationwide contest for Firestone, sales contest, called the Tropicana?

A. Yes.

Q. You find, do you not, that Firestone is well regarded in Baltimore?

Mr. Kelaher: Your Honor, I object to this line of questioning. I think it is going far beyond the direct. He is testifying as to his experience as a Sinclair dealer. Mr. Thompson is going into his relations as a Firestone distributor in connection with the Atlantic program, apparently.

Mr. Correa: I think if your Honor please, Mr. Kelaher is objecting because this testimony, unlike all the rest of the witness's testimony, involves respondents and the issues in this complaint and not something else.

Mr. Thompson: If your Honor has any doubt I will quickly make it relevant.

Hearing Examiner Kolb: I wish you would. I don't know what it is all about.

Mr. Thompson: All right, sir. I will make it relevant.

By Mr. Thompson:

Q. You testified I believe, sir, that you were a Firestone dealer and a Firestone distributor for about 25 years?

1464 A. Yes, sir.

Q. Even while you were a leasee of a single station?

A. Yes, sir.

Q. And during all of that period you sold a great deal of Firestone TBA, did you not?

A. Yes.

Q. One of your customers was the Long Station at Reisterstown, am I correct?

A. Yes.

Q. That is an Atlantic station?

A. Yes.

Q. Leased by Atlantic to Mr. Long?

A. Yes, sir.

Q. And Long has been a leasee of the Atlantic to your knowledge for many, many years, has he not?

A. Yes, sir.

Q. In fact, I think there were two Longs, were there not, father and son?

A. The one that had the station was Carrol Long until his death a couple of years ago, and then his brother took the station and is leasing it now.

Q. And he is Mr. John Long?

A. John Long.

Q. And it was a part of your functions, was it not, to offer Firestone TBA to the Long Station?

1465 A. Putting it that way, it wasn't part of my function to offer it to anybody other than what I could—who I could sell.

Q. I mean, sir, it was part of your sales activity?

A. Long came to me. I never bothered about going to him.

Q. But you did sell Mr. Long Firestone?

A. I sold him, yes, sir. And I sold every station in the country and surrounding country. They would come to me. I had no outside solicitation at all. They would come to me.

Q. Including a number of other Atlantic stations, am I not correct?

Mr. Kelaher: Objection to this line of questioning.

Hearing Examiner Kolb: Overruled.

The Witness: That is the only one that ever amounted to anything.

By Mr. Thompson:

Q. It is true, is it not, that the Long Station is quite close to the Sherwood Sinclair Station which you had?

A. Yes, sir.

Q. And quite close to the Shell Station?

A. That's right.

Q. And you know Mr. Long quite well, do you not?

A. Yes, sir.

Q. Is that station, about a block from your present location?

A. About.

Q. Do you observe it from time to time, sir? Do 1466 you drop in and say hello to Mr. Long? Do you see the station?

A. Maybe once a month or so.

Q. Is it not true that the Long Station has a number of TBA competitive signs displayed?

Mr. Kelaher: Objection.

The Witness: I wouldn't know. Never having paid that much attention.

Hearing Examiner Kolb: Overruled.

1467 By Mr. Thompson:

Q. Don't they advertise Diamond and Brunswick tires?

A. I have never paid that much attention.

Q. Have you ever noticed a Delco Battery sign at the station?

A. I wouldn't know.

Q. How about the Esrine sign, have you ever noticed that?

A. No.

Q. Or the Gates sign, have you ever noticed that?

A. No.

Q. During the time when you were offering Firestone TBA to the Long station, is it not true that Mr. Long dealt with a number of other suppliers?

A. Yes, sir.

Q. And he is still doing it today, is he not?

A. As far as I know he is not buying much from me.

Q. Was Bearings Service one of his important suppliers, do you recall?

A. I wouldn't know.

Mr. Kelaher: Objection to this line of questioning.

The Witness: That is none of my business. I paid no attention to it. I don't know who he bought from.

Hearing Examiner Kolb: Overruled.

By Mr. Thompson:

Q. The R. J. Long Company is one of your competitors, is it not?

1468 A. Not any competitor of mine, no, sir.

Q. Because you just outdo him everywhere?

A. No, I buy from him.

Q. You buy from him?

A. Yes.

Q. They sell to the distributors?

A. Yes.

Q. At wholesale?

A. Yes, sir.

Mr. Kelaher: Your Honor, I would like to make this observation. If Mr. Thompson intends to go as far beyond direct as he has here, I think he should make this witness his own witness, if he is going to develop his business as a Firestone distributor.

Mr. Thompson: This is not beyond the direct. It shows the activity of this admirable gentleman during the time when he was a Sherwood lessee and when the Sherwood Company was under the Goodyear plan.

All of this testimony develops his complete freedom of action. It shows that he was also handling Firestone, and selling it just as a matter of routine next door to an Atlantic station.

Hearing Examiner Kolb: If that is the case, you should confine your questions to 1946, shouldn't you?

1469 Mr. Kelaher: He has also testified that he handled his two operations separately, your Honor. If he would confine his questions to what he handled in his stations, or his activities as a Sinclair dealer, I think it would be proper cross. I don't think this is proper cross.

Mr. Thompson: I would be happy to confine my questions, sir, to what happened before 1956. I would like to pick up a direct question of Mr. Kelaher's—

Mr. Kelaher: Excuse me. Before you go back to prior to 1956; at this point I would like to move to strike the testimony up to this point which relates to any period after 1956.

Hearing Examiner Kolb: I will let it stand.

By Mr. Thompson:

Q. Sir, you testified, I think, that at one time you were handling both the Goodyear line and the Firestone at your own station, and your comment was to this effect: "Let the public decide whether they want to buy Goodyear or Firestone." Is that a fair paraphrase?

A. Yes.

Q. In actual experience, which of the two lines did you find had more customer acceptance in Baltimore?

A. Firestone.

Q. Would that be so, sir, in your experience over the years?

A. Yes, sir.

1470 Mr. Thompson: Thank you very much, sir.

Mr. Kelaher: I have some further questions.

Mr. Correa: I have one question.

Mr. Kelaher: Go ahead.



By Mr. Correa:

Q. You are a former Firestone employee, are you not?

A. Yes, sir. I was also a former Goodrich employee and General employee.

*Redirect Examination by Mr. Kelaher.*

Q. Mr. Osborn, when were you a Firestone employee?

A. Up to 1932.

Q. During this period when you were a Sinclair lessee, were you in a position to purchase Firestone TBA at a lower price than Goodyear TBA for resale in your station?

A. Yes, sir.

Q. During this period when you were a Firestone distributor and also a Sinclair lessee operator, did you operate separate and distinct organizations with respect to your Firestone operation?

A. Yes, sir.

Q. As a Firestone distributor, what brand of batteries did you carry?

A. Firestone.

Q. And, of course, Firestone tires?

1471 A. Yes, sir.

Q. Did you carry the Firestone line of accessories?

A. Yes, sir.

Q. In your Sinclair station what brand of batteries did you carry?

A. I carried Firestone and Goodyear.

Q. What brand of tires did you carry?

A. Firestone and Goodyear.

Q. What brand of accessories did you carry, what lines?

A. Firestone mostly. It was in their catalog. They weren't brand tires particularly.

Q. Did you carry some Goodyear accessories?

A. Yes, sir.

Q. You were asked questions concerning the modernization of your station in or about 1954. How long did it take Sinclair to modernize your station or renovate?

A. It was the year, practically the whole year.

Q. Practically a year. During that time were you able to pump gasoline?

A. Well, we could, but it was awfully rough. It was hard to get into the place.

Q. During that period did you incur any financial loss due to the renovation of the station?

A. Yes, sir.

Q. Approximately in what amount?

1472 A. About \$8,000.

Q. On cross-examination you were asked a question concerning yearly gallonage. You answered, as I recall, that you never bothered about that. Do you bother about monthly gallonage?

A. Yes. We generally—I generally total up the monthly gallonage to see how I am doing. But I can't remember what my gallonage was ten, fifteen, or twenty years ago.

Q. As a part of normal service station operation, do you normally calculate your gallonage by the month rather than by the year?

A. That's right.

Q. You were also asked by counsel for Respondent Goodyear whether or not you had filed suit.

Mr. Kelaher: At this point, your Honor, I have a certified copy of the suit which was filed by this gentleman. If the record is going to stand as it is, I would prefer to have it—

Hearing Examiner Kolb: Does that have anything to do with the issues in this proceeding?

Mr. Correa: I may say, if your Honor please, that I offered on cross-examination of this witness that he is engaged in suing Sinclair for the simple, classic reason

of bringing out every element in the picture which might tend to show bias or prejudice which would affect his testimony. I offered it solely on the issue of credibility.

1473 Mr. Kelaher: Just so the record will be clear, I would like to state that suit was filed June 26, 1957, by Mr. Osborn versus Sinclair Refining Company, in the District Court of Maryland, Civil Suit Number 9769.

Mr. Correa: I take it we can stipulate that the suit does not involve the sales commission plan but other issues.

Mr. Kelaher: The suit does involve the sales commission plan.

Mr. Correa: You read the complaint.

Mr. Kelaher: If there is any question about it, I will ask that the notarized and certified copy of the complaint be introduced in evidence. I also have the answer. I would put both of them in.

Mr. Thompson: If your Honor please, on behalf of Atlantic Refining Company, I would certainly object to any complaint filed by Mr. Osborn against Sinclair. It could have no possible relevance.

Mr. Correa: Particularly since it is perfectly apparent from Paragraph 8, the first sentence of Page 3 of the complaint, which Mr. Kelaher has tendered, that the basis of this suit is the alleged Purchase and Resale Plan. That is what is alleged in that paragraph.

Hearing Examiner Kolb: Since you brought it up on cross-examination, it looks to me like it might be  
1474 competent and relevant.

Mr. Correa: If your Honor please, may I be heard on that a moment?

Hearing Examiner Kolb: All right.

Mr. Correa: If it had been that he was suing for assault and battery, let's say, or for negligent operation of

one of their trucks, causing an injury, I submit that it would still be relevant to show that the witness did have — was in the factual posture of suing the company about which he was testifying, as showing one of the elements that might conceivably color his mind and his emotional attitude.

Hearing Examiner Kolb: The nature of the suit would also be competent.

Mr. Correa: The nature of the suit was not brought out, if your Honor please, on cross. All we were seeking to establish is that he is suing. I don't know that the matter is terribly important, frankly, but I do think that this complaint is so far away from the issues of this case that to put it into this record is simply to add an element well calculated to lead to utter confusion. I don't know for what purpose, what limited purpose, it could conceivably be admissible.

Mr. Kelaher: I move that the complaint, identified as Civil Suit Number 9769, by Kriete Osborn, Sykesville, Maryland, plaintiff, versus Sinclair Refining Company, 1475 600 Fifth Avenue, New York, New York, 10 Light Street, Baltimore, Maryland, care of Corporation Trust Company, resident agent, 10 Light Street, Baltimore, Maryland, defendant in the District Court of Maryland, be offered into evidence as Commission's Exhibit 329.

And that Defendant's answer thereto in Civil Action Number 9769 in the United States District Court for the District of Maryland be marked as Commission's Exhibit 330.

Mr. Thompson: Your Honor has not ruled upon Atlantic Refining's objection. It is perfectly obvious to me that this complaint and answer is wholly irrelevant, incompetent, and immaterial as to any issue contained in the present complaint as to the Atlantic Refining Company.

Hearing Examiner Kolb: That is a suit against whom?

Mr. Kelaher: Sinclair Refining Company.

Hearing Examiner Kolb: It will be received, subject to a motion to strike by Atlantic.

Mr. Correa: And over our objection?

Hearing Examiner Kolb: Objection overruled. I think I indicated that before.

Mr. Correa: I am not sure, if your Honor please, and I want my record complete, that our objection is based upon the fact that this complaint shows on its fact that it does not involve the sales commission plan, among other grounds.

1476. (Whereupon, the documents referred to were marked COMMISSION'S EXHIBITS 329 and 330 for identification, and received in evidence.)

By Mr. Kelaher:

Q. Mr. Osborn, you were questioned about an Atlantic station identified as being operated by Mr. Long. Do you know whether Mr. Long was a lessee-operator or a so-called independent operator?

A. He was a lessee-operator, as far as I know.

Mr. Kelaher: No further questions.

*Recross Examination.*

Mr. Correa: First I should like, if your Honor please, at this time, to move, on the basis of Commission's Exhibit 329 in evidence, which your Honor will recall was admitted over our objection, that on the basis of that exhibit, and specifically upon the basis of so much of Paragraph 8 thereof—numbered paragraph 8—that states: "That on or prior to 1956, the defendant entered into agreements with manufacturers of tires, batteries, and other automobile parts and accessories pursuant to which such manufacturers purported to sell to the defendant tires, batteries and other automobile parts and accessories destined for

ultimate sale at retail through service stations selling gasoline manufactured by the defendant."

I move, on the basis of this exhibit, therefore, to 1477 strike all of the testimony of this witness with reference to the period prior to 1956.

Hearing Examiner Kolb: The motion will be denied.

By Mr. Correa:

Q. Now, Mr. Witness; you testified a moment ago in response to Mr. Kelaher's questioning that at your Sinclair service station you sold Firestone and Goodyear batteries; is that correct?

A. Yes, sir.

Q. Are you familiar with this Commission's Exhibit 329, the complaint in your case against Sinclair?

A. No, sir.

Q. You are not familiar with it?

A. I don't know what you are talking about.

Q. I say, are you familiar with this complaint?

A. I am familiar with—I got a suit, that is all I know. I am not a lawyer, sir. I don't know what you are talking about.

Q. I wonder if you had read the complaint.

Mr. Kelaher: Your Honor, I object to any questions concerning the legal nature of the suit. I think they are wholly—

Mr. Correa: I can't understand counsel. Apparently it is all right if he does it but all wrong if I do it.

Mr. Kelaher: You are the one who raised the 1478 point; I didn't.

Mr. Correa: No, sir. I raised it for a perfectly proper reason, bearing on the credibility of the witness. I warned that we would get into this.

Mr. Kelaher: Let him answer the question. It is all right with me.



Hearing Examiner Kolb: Are you withdrawing your objection?

Mr. Kelaher: I withdraw it.

Hearing Examiner Kolb: The witness may answer.

Read the question.

(The reporter read the question.)

The Witness: I read the complaint, but I didn't memorize it.

By Mr. Correa:

Q. I direct your attention, sir, to Page 4 of this complaint.

Mr. Kelaher: Your Honor, I hope we are not going to try to start a lawsuit here.

Mr. Correa: You raised it.

Mr. Kelaher: He brought up the matter of the suit and that is why we introduced it.

Hearing Examiner Kolb: I think the complaint was offered to show the nature of the suit. The complaint shows the nature of the suit. I see no reason to examine this witness further as to what this is about.

1479 Mr. Correa: This goes to his credibility.

Hearing Examiner Kolb: I can't see that.

Mr. Correa: I don't think your Honor can at this moment because my line just started laying a foundation for it. I will be glad to state, in the absence of the witness, where I am going and what I expect to prove. I prefer not to state it in his presence. If I have to, I might as well withdraw the whole thing because my cross-examination will, in effect, have been stultified.

Hearing Examiner Kolb: Are we going over all this complaint word by word?

Mr. Correa: No, we are not. We are going over the parts that are relevant, a rather short line of examination that I have.

Hearing Examiner Kolb: The witness may be excused for a minute.

(The witness left the room.)

Mr. Correa: The witness has testified, not once but a couple of times at least, in the course of his testimony that he carried Goodyear and Firestone batteries.

In the complaint he states that "Plaintiff was unwilling to accede to these requests and so informed representatives of the Defendant. However, Plaintiff did stock tires of Goodyear, in addition to those tires which he normally stocked, and also stocked only Goodyear batteries."

1480 Hearing Examiner Kolb: Your question is as to only Goodyear batteries?

Mr. Correa: Yes, sir.

Hearing Examiner Kolb: All right.

Mr. Kelaher: Is the question limited to that?

Hearing Examiner Kolb: That is all you are questioning him about that?

Mr. Correa: That is all.

Mr. Kelaher: Now? Or are you going into the whole complaint?

Hearing Examiner Kolb: I understand that is all that you have?

Mr. Correa: That is all that I have.

(The witness returned to the hearing room.)

Hearing Examiner Kolb: Let the witness see the complaint.

Mr. Correa: Does Paragraph 10 begin in the middle of Page 4?

Mr. Kelaher: Yes.

Mr. Correa: Then apparently I have a photostatic copy of the same thing.

Mr. Kelaher: This is a certified copy of the complaint.

By Mr. Correa:

Q. Mr. Witness, I direct your attention to the 1481 statements appearing on that page, which has been exhibited to you, and the paragraph preceding the paragraph marked "10".

A. You mean before?

Q. Yes.

A. That goes back to the next page then.

Q. It starts on the bottom of the next page, I believe.

Mr. Kelaher: So the record will be clear, you are referring to Paragraph 9?

Mr. Correa: That's right. Starting at the bottom of Page 3.

Hearing Examiner Kolb: Do you want him to read the whole paragraph or just part of it?

Mr. Correa: I would like him to read the whole paragraph, so he can read it in context.

By Mr. Correa:

Q. I have two questions.

You note in the complaint it is stated that, after you had informed representatives of the Defendant—referring to the Sinclair Company—that you would not accede to their requests—and I paraphrase—

Mr. Kelaher: I think it states "accede fully."

Mr. Correa: That's right.

By Mr. Correa:

Q. It goes on to say: "Plaintiff"—referring to yourself—"did stock tires of the Goodyear Tire Company 1482 and Rubber Company in addition to those tires which he normally stocked."

To what tires would "which he normally stocked" refer?

A. Firestone and Goodyear.

Q. It goes on: "And also stocked only Goodyear batteries." Is that statement true, sir?

A. In 1956 I did only stock Goodyear batteries, and only bought Goodyear batteries.

Q. Did you also sell Goodyear batteries?

A. I had some Firestone in stock that I was disposing of, yes.

Q. So you did have Firestone as well as Goodyear batteries in stock?

A. But I made up my mind to buy and sell only Goodyear batteries, or sell out Firestone.

Q. That is in the service station?

A. That's right.

Q. When you say you made up your mind, that was as to the service station?

A. Yes.

Q. I take it you planned to continue selling Firestone batteries in the adjacent store?

A. I closed the store when they built the new station, and devoted my time completely to the station.

Mr. Correa: No further questions.

1483 *Redirect Examination by Mr. Kelaher.*

Q. You stated that you closed out the store when they built the new station. Did you operate a Firestone store up until that time?

A. That's right.

Q. And then you continued on as a Firestone distributor, though, did you?

A. That's right.

Q. Even though you closed out the store?

A. Yes, sir.

Hearing Examiner Kolb: Is that all?

Mr. Kelaher: That is all that I have.

Hearing Examiner Kolb: The witness may be excused.

(Witness excused.)

Mr. Correa: There is one point we are not sure is clear on the record. May we have a moment?

Thank you. No further questions.

Hearing Examiner Kolb: The hearing is recessed, to reconvene at 2:00 o'clock.

(Thereupon, at 1:05 p.m., the hearing was recessed, to reconvene at 2:00 p.m., this day.)

1484

Afternoon Session.

(2:18 p.m.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: I would like to call Mr. William C. Smith to the stand.

WILLIAM C. SMITH was called as a witness for the Commission and, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Kelaher.*

Q. Will you please state your name and home address?

A. William C. Smith, Sr., 8413 Courtleigh Road, Baltimore 7.

Q. Mr. Smith, are you an employee of Baltimore Gas Light Company?

A. I am.

Q. And what is your position with that company?

A. I am the manager of the Automotive Hardware Division.

Q. How long have you been with Baltimore Gas Light Company?

A. Thirty-four years.

Q. What products are sold by the Automotive Hardware Division?

A. In the Automotive Division we sell such products as chemicals, oil, tires, batteries.

Q. Would you please name, as you go along, the 1485 brand names of the products you sell?

A. In chemicals we sell DuPont, Eveready lamps, Gould National batteries, Gates fan belts, Walker oil filters, Auto-Lite batteries, cables and wire, Black and Decker tools, and in our hardware division we sell the usual line of material sold to hardware stores.

Q. Do you sell spark plugs?

A. We sell Champion spark plugs.

Q. Are the products you mentioned and the brand names nationally advertised products?

A. Yes, they are.

Q. What is the sales area of your company with respect to the automotive department?

A. We cover metropolitan Baltimore south as far as Annapolis, north to Bel Air, Maryland, and west to Westminster.

Q. To what classes of customers do you sell? Which class of customers is solicited with respect to TBA?

A. We call on the filling service station, car dealer, garage—

Q. Are you including in your description the so-called commercial accounts?

A. (Continuing.) —the fleet accounts and some industrial accounts, where they are covered by a fleet setup.

Q. How many salesmen are employed in the Automotive Department.

A. We have two that are employed approximately 95 percent of the time spent selling automotive, and we have three approximately 50 to 60 percent of the time, or 1486 perhaps, a little bit better, is spent in automotive.



Q. How many salesmen does the company employ overall?

A. Fifteen.

Q. And are the salesmen in your department compensated by salary or commission, or a combination thereof?

A. They are compensated by commission.

Q. How many trucks are operated by your Department?

A. Five. Now wait a minute. I had better revise that. Our company operates five trucks.

Q. How many are available for distribution of the Automotive Division products?

A. All of them are available.

Q. And are all of them used from time to time?

A. Yes.

Q. Are there Shell, Atlantic, and Sinclair service stations located in your trading area?

A. Yes.

1487 By Mr. Kelaher:

Q. Do you compete with other sellers of TBA in the trading area you described?

A. Yes.

Q. Do you know the names or can you tell us some of the jobbers with whom you compete, or other sellers?

A. Jobbers?

Q. Any one with whom you compete.

A. I can give you some of the names, yes. J. R. Hunt and Company; R. W. Norris; R. J. Looek. There are a number of other ones in there if you want me to continue.

Q. Do you compete with the Brooks-Huff Tire Company?

A. Yes, sir.

Q. Do you compete with the Stuart-Pressley Company?

A. Yes, sir, in certain areas.

Q. Do you compete with the Goodyear service stores?

A. We don't sell at retail.

Q. At wholesale?

A. In some respects I think that we do.

1488 Q. In the normal course of your duties have you compared the prices of your TBA line with the prices of other sellers of TBA lines in your trading area?

A. Yes, sir.

Q. How do those prices compare?

A. They are comparable.

Q. In the normal course of your duties have you compared the quality of your TBA line with the quality of other sellers of TBA in your trading area?

A. Yes.

1489 By Mr. Kelaheer:

Q. Do you sell certain products which are also sold by other sellers of TBA as to brand?

A. Yes, sir.

Q. What arrangement do you have with the Walker people with respect to the distribution of Walker filters in your area?

By that I mean, how are you classed in their distributional scheme of things?

A. We are classed as a distributor.

Q. Did you at one time sell Walker oil filters to a Sinclair dealer by the name of Osborn?

A. Yes, sir.

Q. Where was Mr. Osborn located, where was his station located?

A. Reistertown, Maryland.

Q. At what level of distribution was Mr. Osborn with respect to Walker filters?

A. Jobber or sub-jobber.

1490 Q. What discount did he receive?

A. In most cases 60 percent.

Q. Was Mr. Osborn a large purchaser of Walker filters from your company?

A. I would say so, yes.

Q. During the period 1954 through 1956, or in 1956, did his purchases increase, decrease, or remain the same with respect to Walker filters?

A. His purchases in 1956 decreased.

Q. Do you have with you a record of Mr. Osborn's purchases during the period I just questioned you about?

A. In dollars, yes.

Q. Would you please state what they are?

A. In 1954, he purchased \$239.76. In 1955, \$232.94. In 1956, \$156.48.

Mr. Correa: If the witness is reading would the record so indicate, please?

Mr. Kelaher: The witness is reading, yes.

By Mr. Kelaher:

Q. Are the figures you have given a summary of your account with Mr. Osborn during the period stated?

A. That is correct.

Q. And do the figures you gave relate to the purchase of Walker oil filters by Mr. Osborn from your company?

A. That is correct.

1491 Q. You gave some figures for 1956 for Mr. Osborn. Did Mr. Osborn purchase from you through the year 1956?

A. No, sir.

Q. When did he discontinue purchasing from you?

A. I would say it was approximately May.

Q. At any time prior to that did your business with Mr. Osborn increase, decrease, or remain the same during 1956?

Mr. Correa: That is prior to May, 1956?

Mr. Kelaher: Yes.

I will withdraw the question.

By Mr. Kelaher

Q. Who was your company salesman calling on Mr. Osborn?

A. Mr. Edmond Roettger.

Q. Did Mr. Roettger discuss Mr. Osborn's purchases with you at any time during 1956?

A. Yes, sir.

1494 By Mr. Kelaher:

Q. As I understand it, Mr. Smith, you did have a report from Mr. Roettger concerning Mr. Osborn, did you not?

A. That is right.

Q. At that time, at that point, did you take any steps or do anything in connection with that report?

A. Yes, I did. I called the sales manager of the Walker Manufacturing Company at Racine, Wisconsin, and talked to the assistant sales manager and told him what was occurring. I asked whether there was anything that he could help us do, or anything that he could do.

Q. Would you state the substance of your conversation with the representative of the Walker Company?

Mr. Correa: If your Honor please, this has not been connected yet with anything.

Hearing Examiner Kolb: Read the question.

(Question read.)

Hearing Examiner Kolb: That is the reference to the report received from the salesman?

Mr. Kelaher: With reference to the sale of Walker oil filters, that is correct.

1495 Hearing Examiner Kolb: I will overrule the objection.

By Mr. Kelaher:

Q. Go ahead.

A. Where were we?

Q. What was the substance of your conversation with the Walker representative?

A. I told him what had been reported to me, and asked him if he could do anything to prevent this picking up. He didn't know what he could do, but he told me that he would call their district representative and see whether he could help me in any way—help us in any way.

Mr. Correa: I move to strike the answer since it is now apparent that we have the hearsay, unsworn testimony, because that is what it is, retailed, secondhand by this witness who is himself under oath, of some unknown or anonymous Walker company assistant manager or something or other, whatever he is—we will probably never know and never see him, and certainly he is not going to come here and take oath to these things.

Hearing Examiner Kolb: Objection overruled. Motion to strike denied.

By Mr. Kelaher:

Q. Would you state in substance what you told the Walker representative, verbatim insofar as you can remember.

Hearing Examiner Kolb: Mr. Kelaher, I think you 1496 are getting into the conversation which the salesman had and reported to Mr. Smith.

Mr. Kelaher: Yes.

Hearing Examiner Kolb: I don't think you can go at it that way.

By Mr. Kelaher:

Q. After your telephone conversation which you had testified to, did anything further occur?

A. I was called by Mr. Jones, of Walker, who is the district manager for Walker in this area.

Q. What is his name?

A. W. Hap—H-a-p—Jones. He told me that he had been called by his assistant sales manager and that he had—

Mr. Correa: Just a minute, if you please.

I dislike interrupting the witness, your Honor, but obviously I could not tell from the question if we were once more going into the field of unsworn testimony, which apparently we are.

Hearing Examiner Kolb: Let's let the witness answer and see.

A. (continuing)—that he had received a call from his assistant sales manager asking him to get in touch with Sinclair, Brooks-Huff, or Purolator, and check and see what the circumstances were.

Mr. Jones told me that he had called Brooks-Huff but could not reach anyone in authority.

1497. He had then called Sinclair and had talked to one of the TBA sales managers, as I recall the conversation.

By Mr. Kelaher:

Q. That was the extent of your conversation?

Mr. Correa: Just a moment. I make my motion to strike the conversation on all the grounds heretofore urged, to this completely unsworn testimony in the never, never quality as highlighted by the fact that according to my recollection Brooks-Huff never did supply Mr. Osborn with Purolators.

Hearing Examiner Kolb: He simply testified that he reported to them. I will let the answer stand.

Objection overruled. Motion to strike denied.



By Mr. Kelaher:

Q. Did you at one time sell Walker oil filters to a Sinclair service station lessee dealer by the name of Collins?

A. Yes, sir, we did.

Q. Do you recall where Mr. Collins' station was located?

A. It is on Belvedere Avenue and Pimlico Road.

Q. What products did you sell to Mr. Collins?

A. At that time, among others, we were selling Walker oil filters. We sold him some DuPont polishes, some tire chains, some Prestone.

Q. And do you still sell Walker oil filters or other products to Mr. Collins?

A. Practically none.

1498 Q. Do you have a record of your sales to Mr. Collins—

A. Yes, sir.

Q. (Continuing.) —during the past few years?

A. Do you want me to give you records of his total sales—our total to him for filters only.

Q. Give it the way you have it broken down.

A. In 1954, he purchased \$373.56 in filters.

Q. Walker filters?

A. That is right, Walker filters. He purchased \$895.15 miscellaneous material, including Prestone.

In 1955 he purchased equipment, tow crane, and a battery charger amounting to \$555.20. He purchased miscellaneous material amounting to \$230.80. And he purchased \$517.45 worth of oil filters.

In 1956, during the month of January, he purchased \$25.74 worth of oil filters. He purchased \$39.55 worth of chains in January. In March he purchased a charger amounting to \$75.61.

In August he purchased chains amounting to \$9.03. He purchased nothing more that year.

In 1957 his purchases were \$1.65 for a battery clip.

Q. You stated that in January 1957 he purchased \$25.74 worth of—

A. January, 1956.

1499 Q. Of Walker oil filters? Is that correct?

A. That is right.

Q. Had he made any purchases of TBA items since that time?

A. No, he hasn't.

Q. And did Mr. Collins ever—

A. Unless you consider chains as TBA items.

Q. You have given us the—

A. Breakdown.

Q. (continuing) —breakdown of the items he purchased.

Did you ever discuss the matter of Mr. Collins' TBA purchases with Mr. Collins?

A. Yes, sir.

Q. Please state when or about when such discussion or discussions took place, and the substance of them?

A. It was somewhere—

Mr. Correa: That is objected to, if your Honor please.  
Hearing Examiner Kolb: Objection overruled.

A. It was somewhere in January 1956. I can't give you the exact date. Mr. Collins called me on the telephone and told me that he was going to discontinue the purchase of Walker filters from us. I asked him why, and he told me that he had no complaint either as to the service we had given him, the price of the filter, or the quality, and that he felt very bad about discontinuing handling our filter. He told me that for some while he had been trying to get his station improved and painted, and that every time he asked for these improvements the fact that he had a Walker filter display rack up was injected in the conversation, and that he wanted to get him station

cleaned up and painted up, and that he thought he had better go along with the oil company and discontinue Walker filters.

By Mr. Kelaher:

Q. What type filter did Mr. Collins purchase thereafter?

A. Purolator.

Q. How do you know he purchased Purolator?

A. I had been a customer of Mr. Collins. He lived—his place of business was very close to where I lived, and I had been dealing with him since 1951. I had bought practically all of my gasoline and oil from him—and all my gasoline from him during that time, and many other services. I would frequently get into his station, probably once or twice a week. I had been in his station several days before he called me, and he had his display of Walker filters up. Several days after he called me I went into his station and there were no Walker filters on display.

Q. Did Mr. Collins advise you as to what had happened to the Walker oil filters?

A. No, sir, he did not.

Q. Based on your personal knowledge and observation of his station, has he thereafter displayed Walker oil filters?

A. We are the only distributors in Baltimore, and he has not bought Walker filters from us. And as far as I know he has never displayed them.

Q. Did you at any time in 1956 repurchase any stock from Mr. Osborn?

A. We took back for credit quite a bit of stock from Mr. Osborn.

Q. When was this done?

A. This was on June 11, 1956.

Q. What items did you repurchase from Mr. Osborn?

A. Walker filters, Dole thermostats—

Q. Just limit that to TBA items. Did you repurchase items in addition to TBA items?

A. One item. A Lawn Boy mulcher.

1502 Q. And the remainder was all TBA material?

A. Yes, sir.

Q. What was the total amount of that repurchase?

A. \$1,213.66.

Q. Have your sales of Walker oil filters and Gates fanbelts increased, decreased, or remained the same since about 1954?

Mr. Correa: That is objected to, if your Honor please. It is immaterial and irrelevant.

Hearing Examiner Kolb: Overruled.

A. They have decreased.

By Mr. Kelaher:

Q. Do you have a summary of your records showing what the amount of your purchases have been of Walker oil filters and Gates fanbelts?

A. In 1955 we purchased 6600 units of Walker filters. In 1956 we purchased 5,385 units. In nine months of 1957 we purchased 3,767 units. I have no record of units prior to 1954 as there is no record of filters in units.

Q. Do you have a record in dollars?

A. Not with me. I do have.

Q. Do you have any records with you with respect to your purchase and sale of Gates fanbelts?

A. These are automotive fanbelts, in units.

Q. They are Gates?

A. Gates automotive fanbelts in units. I have this breakdown from 1950. Do you want me to go all the way?

1503 Q. Yes.

A. In 1950. 7,836.

1951: 4,102.

1952: 4,088.

1953: 3,097.

1954: 2,785.

1955: 4,288.

1956: 2,185.

1957: 2,025 through September.

By Mr. Kelaher:

Q. During the period in question, from about 1950 to date, based on your sales records and the reports of your salesmen, have your sales to Sinclair stations of Gates fanbelts and Walker filters increased, decreased, or remained the same?

Mr. Correa: That is objected to, if your Honor please.

Hearing Examiner Kolb: The objection will be overruled.

A. They have decreased.

1504 By Mr. Kelaher:

Q. During the same period 1950 to date, based on your business experience and on the reports of your salesmen, have your sales of Walker filters and Gates fanbelts increased, decreased or remained the same with respect to Shell service stations?

Mr. Correa: That is objected to, if your Honor please, on the ground that it violates, among other rules, the best evidence rule, the best evidence of the sales and what his records show as to his sales. I am sure that that proof that counsel wants may be here instead of the business based on his experience and reports of his salesman or whatever he heard in the market place or wherever he happened to hear it.

X

Hearing Examiner Kolb: Objection overruled.

(Question read.)

A. I wouldn't be able to answer that properly. I have no record, or do not have close enough touch to answer.

By Mr. Kelaher:

Q. Do you have with you a record of your sales of TBA items to Mr. Osborn in addition to those you have already given to us on Walker filters?

A. I have all of his purchases, tickets of his purchases. But I don't have them in any form book.

Q. Do you have a summary of the purchases of Mr. Osborn?

A. Which I have already given you.

1505 Q. You just gave us Walker filters. Do you have other items?

A. No, sir, not broken down.

Wait a minute, let's see. Yes, I do, too.

In 1954, Mr. Osborn purchased Gates amounting to \$411.52. Walker to the amount of \$239.76. Miscellaneous, to the amount of \$3,155.81.

In 1955, Gates amounted to \$389.35. Walker amounted to \$232.94. Miscellaneous amounted to \$1,680.22.

In 1956, Gates amounted to \$99.02; Walker, amounted to \$156.48. Miscellaneous, \$377.83.

Q. In this miscellaneous figure you have given us, are there any TBA items included in there?

A. Yes, sir, there are.

Q. And what proportion of his purchases would be of TBA items, if you know?

A. I can't give you that information. I haven't broken it down that far.

Q. What other items might be in there?

A. Tire chains, Prestone, lawn mowers. Those are some of the items I recall in there.



Mr. Kelaher: No further questions.

Mr. Thompson: If your Honor please, I move to strike this entire testimony on a wholly different ground. Of course I realize that the Commission has ruled that relationships between the Goodyear Tire & Rubber Company and the service stations of other oil companies must 1506 be received by you subject to my motion to strike.

That is not the situation here at all, sir. We have in this situation a company named Baltimore Gas and Light, which is not Goodyear, which has had relations apparently with service stations of Shell and service stations of Sinclair. Atlantic hasn't been mentioned. I don't think that this sort of testimony is within the ruling heretofore made by the Commission.

As to Atlantic I think it should be stricken entirely at this time, sir.

Hearing Examiner Kolb: I will let it stand, subject to a motion to strike.

Mr. Correa: With respect to the cross-examination, may I suggest it might be expedited if we could take a brief recess and during that time my associates and I could have the opportunity of examining these *aide-memoirs* from which the witness has been largely testifying.

Hearing Examiner Kolb: We will take a recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

*Cross-Examination by Mr. Correa.*

Q. Mr. Smith, your company is engaged in the wholesale distribution of a number of various kinds of 1507 products, is it not?

A. That is correct.

Q: Would they include such things as electrical light fixtures?

A. Yes.

Q. And electric clocks?

A. Yes.

Q. Doorbell chimes?

A. Yes.

Q. Electric percolators?

A. Yes.

Q. Garbage cans?

A. Yes.

Q. And a whole variety of items?

A. Oil.

Q. Wolf's Head oil, is it not?

(No response.)

What part of the total volume of business of your company is accounted for by your automotive supplies and parts business?

A. The department I head sells approximately from five to six hundred thousand dollars a year. Of that, approximately 40 to 50 percent is automotive supplies and accessories.

Q. How does that relate—that would be roughly \$250,000 annual volume?

A. That is right. Between 250 and 300-thousand dollars.

1508 Q. How does that relate to the total annual volume of your company?

A. Roughly about one-tenth.

Q. About ten percent?

A. That is right.

Q. So that would be fair to say that your company is engaged primarily in businesses other than the automotive supplies and equipment business?

A. I don't think so. It is engaged in automotive supplies and equipment as much as it is in anything else.

Q. With the limitation to the extent of 10 percent of its total business?

A. If you want to put it that way, yes.

Q. You gave us some figures, and I won't attempt to repeat them—I didn't bother to write them all down—of sales of certain items. I think you included oil filters and fanbelts. Let me ask you, sir, is it a fact that the total sales of your company in every kind of thing they sell, that is the total of all sales, did decline in let's say 1956 as against 1955?

A. No, sir.

Q. By 138-odd thousand dollars?

A. Not to the best of my knowledge. I do not have the exact figures.

Q. Would you know that, sir?

A. I would not.

1509 Q. Would you know that the net profit of the operation had also declined by something on the order of 33½ percent?

A. I have no access to those figures.

Q. You wouldn't know about that?

A. No, sir.

Q. Do you hold any office in the corporation?

A. Yes, sir.

Q. What office do you hold?

A. Assistant secretary and treasurer.

Q. Assistant secretary and assistant treasurer?

A. Yes, sir.

Q. In your capacity as assistant treasurer don't you get exposed to the net profits picture of the company?

A. No, sir.

Q. You talked about a man named Osborn. Is he a competitor of yours?

A. No, sir.

Q. Do you know whether or not Mr. Osborn was a

wholesale distributor of Firestone tires, batteries, and accessories?

A. In Reisterstown, yes.

Q. Do you distribute in that area?

A. Not a great deal.

Q. Did you at all?

A. Yes.

Mr. Kelaher: Your Honor, I think he was completing his answer.

Had you completed your answer?

Mr. Correa: If you hadn't, speak up.

The Witness: Will you read it?

(Answer read.)

By Mr. Correa:

Q. Do you feel you were cut off in some respect? Is there something you wish to add?

A. No, sir.

Q. Did you also distribute, to the extent you did distribute in that area, tires, batteries, and accessories?

A. We very seldom called on the same accounts that Mr. Osborn called on.

Mr. Correa: Will you read the question?

(Question read.)

The Witness: Will you read that again?

(Question read.)

A. Yes.

By Mr. Correa:

Q. Did you have any agreements or understanding with Mr. Osborn that you wouldn't call on the same accounts?

A. No.

Q. It just happened that way?

A. That is right.

Q. Does Firestone, so far as you know, sell a competing oil filter to the Walker filter?

A. I don't know that. I believe that they do.

Q. Do you know under what name it sells?

A. No.

Q. I suggest to you that it sells under the name of

AC. Does that refresh your recollection at all?

A. No, sir; it does not.

Q. I suggest to you that there is also an oil filter sold by Firestone under the name Firestone. Does that refresh your recollection?

A. That might be so. I don't know that personally.

Q. I suppose you wouldn't know what price basis Mr. Osborn would be able to purchase Firestone oil filters?

A. No, I do not.

Q. Referring to the years 1954, 1955, 1956 and 1957, do you know, sir, that during those years Purolator had a promotional policy of giving free merchandise to dealers who purchased Purolator filters?

A. I know in '57 they did.

Q. That was a set of dishes, wasn't it, with every 26?

A. They have had several different promotions. I think that one of them was that promotion.

Q. Did your company, in respect of the sale of Walker filters in that same year, make any comparable offer?

A. Yes, sir.

1512 Q. What?

A. We had as one example—we gave—

Q. This is 1957, just so we tie it down.

A. 1957, you are talking about?

Q. Yes.

A. We gave a Black & Decker drill with the purchase of so many filters.

Q. How many?

Mr. Kelaher: Objection, your Honor, unless the information is submitted with respect to the Purolators' deal.

Mr. Correa: This is cross-examination. I am asking the questions. I am not testifying.

Hearing Examiner Kolb: Objection overruled.

Did you finish your answer?

The Witness: We gave a drill with the purchase of 48 filters.

1513 By Mr. Correa:

Q. Just to satisfy Mr. Kelaher, do you recall that Purolator gave a set of dishes with the purchase of 26 filters?

A. I do not recall that but vaguely. I think they did give a dish or some premium with the purchase of filters. I do not remember the exact figure.

Q. How about 1956? Did you in respect of your sale of Walker Filters give any promotional merchandise free?

A. We did have deals but I cannot recall them at the present time as to just exactly what they consisted of.

Q. This is with reference to last year, 1956.

A. 1956. I could not give you an exact answer as to what the deal consisted of.

Q. You talked some about a dealer named Collins, did you not?

A. Yes, sir.

Q. And you say, if I recall your testimony correctly, that Mr. Collins is near your place of residence and that you have been a customer of his for the purchase of gasoline for some time, is that correct?

A. That is correct.

Q. How far back?

A. From 1951.

Q. And you spoke of Mr. Collins speaking of wanting some kind of work done by the company around the station, is that right?



A. That is what he told me, yes.

1514 Q. And he told you that according to your testimony in, was it January, 1956, or am I wrong?

A. I think it was somewhere around that time. This was in 1956, which is at least a year ago. I am not absolutely positive of the time. I do think, though, that it was around January.

Q. Of 1956?

A. That's right.

Q. As a matter of fact, there had been considerable work done around that station between 1951 and January, 1956, had there not?

A. If it was, it wasn't so terribly apparent because his station looked rather rough.

Q. Hadn't two additional stalls been put in?

A. I would not answer that. I can tell you the appearance of the station was rough. I don't know what work had been done.

Q. Prescinding, if we may, from in your view of the rough appearance of the station, can you tell me did you notice the addition of two new stalls?

A. I did not notice the addition of two stalls, no.

Q. Did you notice that the area in back of the station had been paved for parking purposes during that period?

A. I know it is paved, part of it. I did not know that it had been done during that period.

1515 Q. Now, sir, does Mr. Collins sell tires in his station?

A. Yes, sir.

Q. What kind?

A. I believe that they are Goodyear.

Q. You never noticed?

A. I never noticed particularly the brand and tires.  
no.

Q. Did you notice that Mr. Collins displays tires in that station?

A. I have not paid particular attention to the brand of tires he sells.

Q. Have you ever tried to sell him Mansfield Tires, which I believe your company purveys?

A. No, sir, I have not.

Q. So, you have taken no interest in Mr. Collins as a potential tire customer?

A. There is not much use of taking interest in Mr. Collins' potential tire account.

Q. What is the policy of your company in selling Gates Belts with respect to obsolescence?

A. As a rule, we sell only the most popular belts. And as a rule there is very, very little obsolescence in those belts. If there is obsolescence, agreement is reached between the operator and the company as to what to do about it.

Q. Do you have any standard policy of regularly going into your customer's shelves and replacing obsolete belts?

1516 A. Our salesmen generally take care of the station stock. And if they find anything that is too obsolete, they generally take it up with me and ask me to return it.

Q. Do you have any standard policy of doing that at regular intervals?

A. No.

Q. Are you aware that Goodyear does have a standard obsolescence policy with respect to Goodyear belts, whereby once a year the dealer's stock is gone over and all obsolescent belts are replaced?

A. To my personal knowledge, no.

Q. May I inquire, sir, on what time terms you sell tires, batteries and accessories?

A. Most tires, batteries, and accessories are sold on two percent, 10th proximate.

Q. Is that true of large orders as well?

A. It is true in most cases, yes.

Q. You mentioned one of your competitors, Brooks-Huff, is that right?

A. Yes, sir.

Q. Do you know on what terms Brooks-Huff customarily sells large orders of tires, batteries, and accessories?

A. To my knowledge, no.

Q. Would it refresh your recollection if I suggested to you that Brooks-Huff sells on terms of 30, 60, 90 days?

1517 Mr. Kelaher: Objection.

Hearing Examiner Kolb: Objection overruled.

The Witness: I don't know that personally. I can't answer the question.

By Mr. Correa:

Q. Do you sell truck tires?

A. We carry them. We sell very few.

Q. Do you mount truck tires for dealers who purchase your truck tires?

A. We do not.

Q. Are you aware that your competitor, Brooks-Huff, does offer this service?

A. I don't know about it personally, no.

Q. I am not certain I understand the qualification in your answer?

A. You asked me if I knew whether Brooks-Huff mounted tires for their customers?

Q. Dealer customers?

A. I do not know that, no.

Q. Do you, in general, in selling merchandise yourself, find it helpful to know what terms and conditions of sale and concession and the like are being offered by your competition?

A. Yes.

Q. As a matter of fact, as sales manager it really is part of your job, is it not, to know what your competition is doing?

1518 A. It is part of my job, yes.

Q. Do you give any deal on tubes?

A. On tubes?

Q. Yes.

A. Yes. Now wait a minute. Let's not say "a deal." We have a price.

Q. For example, would the price on a purchase of 24 tubes differ from the price on a purchase of less than 24, and if so, in what respect?

A. Yes.

Q. How?

A. It would be cheaper.

Q. By how much?

A. I can't give you the percentage.

Q. What would the percentage be on buying less than 24 tubes?

A. I can't give you that without checking my price sheet. There is not a definite percentage off. We figure on making a different percentage of profit on a larger volume purchased by the dealer.

Q. Is 24 a breaking point or is it some other figure?

A. As I recall it, it is one of my breaking points.

Q. How about 48?

A. That is another.

Q. Do you know what the percentage off is on 48?

A. Not without checking the price sheet.

1519 Q. Would I correctly guess that 72 is the next one?

A. I recall my price sheet break stops at 48. If someone is interested in larger quantities, then we quote a special price.

Q. Then, you really make ad hoc deal? I will withdraw that. You make a spot deal?

A. Yes, sir.

Q. Do you know that your competitor, Brooks-Huff, gives 15 percent off for a purchase of 72 tubes?

A. We don't use a discount. We have a net figure.

Q. I am sorry, I am afraid you misunderstood my question, Mr. Witness. I was not asking you about your own practice now. I was asking you whether you knew of the practice of your competitor, Brooks-Huff, in giving 15 percent off on a purchase of 72 tubes?

A. I do not know their price set up.

Q. You testified, unless I misunderstood—I will withdraw the question, subject to checking my notes.

Do you, sir, give free merchandise or equipment to your battery customers?

A. Sometimes, yes.

Q. Any regular policy in that respect?

A. We will have a deal occasionally where the man will buy six batteries, 12 batteries, and get a display stand or a tester at no charge.

1520 Q. Do you know what your competitor, Brooks-Huff, does in that respect?

A. No, sir.

Q. How about one of your other competitors, let's say, J. R. Hunt? Do you know what J. R. Hunt does in that respect?

A. They have similar deals but I cannot tell you the current deal or what that particular deal would be.

Q. Stuart-Pressley?

A. Same answer would apply to them.

Q. Do you know that your competitor, Brooks-Huff, is currently running a sales contest offering many prizes to dealers purchasing the most tires over a four-month period?

A. I do not know.

Mr. Correa: I have no further questions, but if your Honor please, I should like to ask that this witness be available for further cross-examination after the next witness has testified. I dislike to interfere with the gentleman's time but, your Honor will appreciate there are certain points that may arise on the testimony of the next witness which would warrant further cross-examination of this witness.

Hearing Examiner Kolb: Will you wait around?

Mr. Kelaher: Does counsel for Atlantic have any questions?

Mr. Thompson: I have no questions, sir.

Mr. Kelaher: No questions, your Honor.

1521 Hearing Examiner Kolb: You are excused for the time being until we finish with the next witness.

(The witness was temporarily excused.)

Hearing Examiner Kolb: We will have a short recess.

(A short recess was taken.)

Hearing Examiner Kolb: On the record.

E. EDMOND G. ROETTGER was called as a witness and, having been first duly sworn, was examined and testified as follows:

*Direct Examination.*

Hearing Examiner Kolb: Will you give your name to the reporter?

The Witness: E. Edmond G. Roettger.

My address is 6005 Wakehurst Way, Baltimore 12.

By Mr. Kelaher:

Q. Are you an employee of the Baltimore Gas Light Company, Mr. Roettger?

A. Yes, sir.

Q. What is your capacity?



A. I am an outside salesman.

Q. How long have you been an outside salesman with Baltimore Gas Light Company?

A. For 11 years.

Q. In what territory do you solicit business?

1522 A. Principally the northwest part of Baltimore and Baltimore County and Car. County.

Q. Do you carry the line of products, the regular TBA line of the company?

A. Yes, sir. I sell the regular TBA line.

Q. That includes Walker Oil Filters and Gates Fan Belts?

A. Gates Belts, Champion Plugs, Everready Lamps, Prestone.

Q. Are there other sellers of TBA who sell to the same class of trade to whom you sell in your marketing area?

A. Yes, sir, there are many.

Q. Could you give us the names of some of those?

A. R. J. Loock, R. W. Norris, B&B Auto Supply. Most of the major oil companies market products of their own in the TBA set up.

Q. Do sellers of Goodyear TBA sell in your area?

A. Yes, sir.

Q. Does Brooks-Huff Tire Company sell in your area?

A. Yes.

Q. Does Goodyear itself, that is, through its service store or district store, sell in your territory, do you know?

A. That, I am not sure on how it is done, whether they sell directly or whether Brooks-Huff sells it, or how that is done.

Q. To what classes of customers do you sell?

A. I sell the automotive stations, car dealers, fleets, and independent repair shops in the automotive trade.

1523 Q. In your TBA line, do you carry a brand of tires, or line of tires?

A. Yes, sir; we do.

Q. What is the brand name?

A. The brand name is Mansfield.

1524 Q. Is that a large seller with you?

A. No, sir, it is not. I sell no tires.

Q. Do you sell a line of batteries?

A. Yes, we sell batteries.

Q. And accessories?

A. Yes, sir.

Q. And do you solicit business on batteries and accessories?

A. Yes, sir; I do.

Q. Approximately how many Sinclair stations are in your sales territory?

A. I would estimate about 40 to 45 stations.

Q. Do you solicit business from Sinclair stations and if so, how long have you been soliciting such business?

A. At the present time, I solicit actively from about six Sinclair stations. One time I sold about 15.

Q. You stated at one time. Approximately, when was that period you are referring to?

A. They declined one at a time for, I would say, probably the most of it was around six years ago.

Mr. Thompson: I understand that I have a continuing objection to this line of questioning, and my motion to strike may be made later?

Hearing Examiner Kolb: Yes. It is received subject to a motion to strike by Atlantic.

By Mr. Kelaher:

1525 Q. With respect to Sinclair Service Stations, has your particular volume of business increased, decreased, or remained the same since you began calling on them 11 years ago?

A. My volume has decreased over the past years in that I have lost a number of accounts on specific lines that I at one time had an automatic fill-in on.

Q. And would you please state the names of certain of such accounts?

A. One of them was Collins Service Station at Pimlico and Belvedere, a Sinclair station. Another was a station that is now Morning Star and Stephens, Pikesville, formerly A. E. Caltrider.

Another one that came under that heading would be Kriete Osborn, in Reisterstown, a Sinclair station.

Q. These are all Sinclair stations?

A. Yes.

1526 Q. What particular line or lines did you sell to Mr. Osborn?

A. Mr. Osborn I sold the Champion line, I sold the Gates line, I sold the Walker line, I sold the Dole thermostat line. They were the principal items that we sold him.

Q. Did you have any conversations with Mr. Osborn concerning his purchases of TBA from you, and if so, please state the approximate time, location, and substance of the conversation.

Mr. Correa: "I object to this, if your Honor please. I can't conceive, in view of the fact that Mr. Osborn in his own person has been a witness here this morning, that this interrogation could have any significance, much less relevance or materiality, save in terms of impeaching Mr. Osborn, which I do not understand counsel, who has called him to the stand and vouched for him, is permitted to do.

I submit that the question and testimony, the question is wholly improper and I object to it.

Hearing Examiner Kolb: Objection overruled.

By Mr. Kelaher:

Q. You may answer.

Mr. Correa: May I inquire of your Honor, is that the

answer, that counsel is entitled to impeach his own witness?

Hearing Examiner Kolb: I am not passing on any impeachment. I said the question is proper.

1527 Mr. Correa: May I inquire of counsel for what purpose the testimony is offered, because I must confess that no purpose is apparent other than impeachment.

Mr. Kelaher: Your Honor has ruled?

Hearing Examiner Kolb: I have ruled on the objection. You may proceed.

Mr. Correa: And I object respectfully to the failure of your Honor to require counsel to answer my question as to its purpose.

Mr. Kelaher: I think the purpose will become self evident when he testifies.

Mr. Correa: My objection stands.

The Witness: In January 1956 I made a periodic call on Mr. Osborn. Mr. Osborn asked me to come up and have a cup of coffee with him. And in the process of drinking the coffee, he told me that in the future he wanted me to stop filling in his stock of Walker oil filters, the reason being that he was subjected to, as he put it, pressure from the company to put in the Purolator line. He also told me that they made him an offer to pick up all of his Walker filters that he had in stock, plus whatever odd lots of Firestone that he had left over from many years ago, and replace those with Purolators of current numbers.

Mr. Correa: Is the answer finished? If the answer is finished, I should like at this time, in light of the 1528 answer, to renew my objection and to move to strike the testimony on the ground that it is now patent that there can have been no purpose to this proffered testimony other than impeachment by counsel supporting the complaint of their own witness. And this I conceive to be a completely and wholly improper purpose.

Hearing Examiner Kolb: The motion will be denied.

By Mr. Kelaher:

Q. At that time, or immediately thereafter, did you report this incident to your superiors at Baltimore Gas Light Company?

A. Yes. I had had that happen at one other call, the same week, and I interpreted that as an industry trend or as a means of marketing. And I felt it was my duty to report to my superior that such a trend was in progress.

Mr. Correa: I move to strike the witness's interpretation.

Hearing Examiner Kolb: Motion to strike denied.

By Mr. Kelaher:

Q. Who was your superior at Baltimore Gas Light?

A. My superior at Baltimore Gas Light was Mr. William Smith.

Q. You stated that this same practice had occurred at some other station. Would you identify the other station?

A. The other station that it occurred at, at just about the same time, was Collin's station at Pimlico Road 1529 and Belvedere Avenue.

Q. Did you have any conversations with Mr. Collins with respect to the purchase of TBA, and if so, please state the approximate time, the place, and the substance of the conversation.

A. Yes. Mr. Collins—

Mr. Correa: Just a minute. That question is objected to as calling for rank and pure hearsay.

Hearing Examiner Kolb: Overruled.

The Witness: Mr. Collins called me aside and told me that he—

By Mr. Kelaher:

Q. Would you fix the approximate time?

A. That was in the same week. That was January of 1956. Mr. Collins told me that he had had to discontinue

the use of Walker filters; that, as he put it, there were some two new pumps that he wanted, two new-type pumps that he wanted to have put in the station, and there were some repairs I think to the roof involved, and Mr. Elmore Evans had gotten him aside and told him that if he were going to go along with those repairs that they were going to have to cooperate more in the TBA line, which meant Purolator instead of Walker.

Q. Who was Mr. Elmore Evans with?

A. Mr. Elmore Evans is with Sinclair. He is not the direct TBA representative. There is another Mr. 1530 Evans, a local representative for that district. Mr. Elmore Evans has—I think he is a supervisor, sales supervisor or sales manager of some type.

Q. He is with Sinclair Refining?

A. With Sinclair Refining.

Mr. Collins expressed to me that he had nothing against our service, or our product, or against myself as a representative.

Q. And thereafter did you make any sales of TBA to Mr. Collins?

A. There were some small sales, but the largest thing that we sold in that particular station were Walker filters. He did a very good job on those. And after about a month of contact with not too much effort, I abandoned the call.

Q. Where did that conversation you have described take place?

A. It took place at Mr. Collins' station.

Q. And where did the conversation with Mr. Osborn take place?

A. The conversation with Mr. Osborn took place at the drug store across the street from Mr. Osborn's place of business.



Q. Did you, at one time, solicit business from a Sinclair dealer by the name of Caltrider?

A. Yes, I did.

Q. I think you testified a few minutes ago that 1531 you lost that account?

A. Right.

Q. When did you solicit business from Mr. Caltrider?

A. I solicited Mr. Caltrider since 1946, up until the time that he went out of business.

Q. And approximately when did he go out of business?

A. He went out of business in the latter part of 1956 or the first part of 1957. I don't recall exactly when.

Q. Did you ever have any conversations with Mr. Caltrider concerning the purchase of TBA, and if so, please state the approximate time, the place, and the substance of the conversation.

A. In 19—

Mr. Correa: Just a moment. I object, if your Honor please, on the ground that this is hearsay. He has been asked for conversation with a person who is not subject to cross-examination, and under all of the usual rules of law, which I understand to be applicable here, the question is objectionable.

Hearing Examiner Kolb: I understood the witness testified he sold him up until the time he went out of business. I don't see the purpose of the conversation.

Mr. Kelaher: The purpose of the conversation is to show under what circumstances the purchases of TBA were made by Mr. Caltrider from Mr. Roettger.

Hearing Examiner Kolb: I will overrule the objection and see what the witness says.

The Witness: In 1948 we were selling Purolator filters instead of Walker. We hadn't put in the Walker line as yet. And I was filling in Mr. Caltrider's stock. That with me was not a regular function at the time. If

I checked the stock and told him he was short on such and such a number, usually I got the order.

I made the mistake of doing it in front of a person one day that I didn't know, and Caltrider was very short about this thing. The next week, when I was out to see him again, he told me that the man that I was speaking in front of was a Mr. Allen, whom he called "Doc Allen" with Sinclair, and that if I ever came in there again when he was there, just to say hello and go on about my business and come back later.

He also said at the time that he had heard about the episode of buying filters from me from someone down at the office; I don't know who.

By Mr. Kelaher:

Q. This conversation with Mr. Caltrider you placed when?

A. Took place when?

Q. Yes.

A. In 1948.

Q. Which episode was he referring to?

A. He was referring to the—I don't understand the question.

1533 Mr. Correa: I object to it, if your Honor please.

The witness is not only giving us hearsay, we are getting mental hearsay. He is being called on for the operation of whoever his names's mind is. I think that is about as objectionable as you can get.

Mr. Kelaher: Mr. Examiner, the witness stated that in 1948, when he talked to Mr. Caltrider, he referred to certain episodes concerning filters, as I understood him. I am just trying to clarify his answer.

Mr. Correa: As I understood his testimony, he said Mr. Caltrider, if that is his name, had said that he had heard of the episode, et cetera, quoting Mr. Caltrider.

What Mr. Caltrider referred to I presume Mr. Caltrider would be the best witness on. Obviously, no one wants to call him..

1534 By Mr. Kelaher:

Q. What has your experience been since you began selling Sinclair stations in 1946?

A. When I began selling Sinclair stations in 1946—

Q. With respect to new stations.

A. In respect to new stations, there seemed to be a market. We would sell them some equipment and at 1535 the same time, sometimes, we would get an order for certain TBA items, chemicals, spark plugs, and filters and things of that type.

Over the past few years—and this came about gradually so I can't place it as to exactly what year it began to affect our operation—the Sinclair stations, the order seemed to be placed for the merchandise by the time the stations opened, by the time the operator is even on the premises.

We have little opportunity to sell anything to a new station before it is opened or to get in on the initial order of any merchandise.

Mr. Correa: I move, if your Honor please, to strike this answer, consisting as it does of rambling, conclusory disposition by the witness on the subject of his experience over an indefinite period of time with unnamed and unknown service stations.

Mr. Kelaher: He has discussed the trend from 1946 to date with Sinclair service stations. How he can be more definite than that I don't know.

Mr. Correa: This is a hearing where we are supposed to get testimony as to facts, not a lot of conclusions and generalities.

Hearing Examiner Kolb: I will overrule the objection. Motion to strike denied.

By Mr. Kelaher:

Q. What type of TBA products do you find advertised in Sinclair service stations?

A. Mostly—

Mr. Correa: Objection to this generality of such questions. I submit this is not testimony we are getting at all but an expression of views or opinion by the witness. I object to it.

Hearing Examiner Kolb: Objection overruled.

The Witness: Most of the advertising that is actively displayed in Sinclair stations is Goodyear merchandise or merchandise that is sold through the Sinclair setup. They do not—in fact I have had dealers who would refuse to post advertising on things that they had in stock. As they told me, the company didn't like it up there.

Mr. Correa: Just a moment. I move to strike that. Your Honor, we have this type of testimony, we have had dealers, unnamed, unspecified, who told me, they told me and so on. I submit this is not evidence according to any legal rule.

Mr. Kelaher: Mr. Examiner, I will ask him to be specific, as soon as I can get the question out.

Hearing Examiner Kolb: Bring the matter down to cases.

By Mr. Kelaher:

Q. Would you give us some specific examples of the situation just described?

Mr. Correa: Just to keep my record straight, I will object to that because that doesn't cure the evil at all. It seems to me we should start with specific cases, not get down to them.

The Witness: Osborn was one specific case. I at times asked him to put up certain displays and certain window posters on Walker filters. And he told me, "Just leave

well enough alone," he will sell the filters but not to antagonize anyone by putting it over the windows.

Caltrider was another one, went along with the same line of reasoning. He sold the filters but didn't want to attract a lot of attention by having the signs and displays on the windows and walls.

By Mr. Kelaher:

Q. Do you recall any other dealers?

A. Not directly.

1538 Q. Are Walker oil filters sponsored as a part of the Goodyear TBA line?

A. No, sir, they are not.

Q. Are Gates fan belts a part of Goodyear TBA line?

A. No, sir, they are not.

Q. Are Gould National batteries part of the Goodyear TBA line?

A. No, sir.

Q. Champion spark plugs?

A. No, sir.

1539 Q. Now, with respect to such products, where are they generally displayed in Sinclair stations, if at all?

Mr. Correa: I object, if your Honor please. If the question includes batteries—as Mr. Kelaher knows, and conceded at Philadelphia on this very record, as it is the same case—the Sinclair sales commission plan does not cover batteries. I don't know why Mr. Kelaher proceeds to go into batteries when he knows perfectly well they are not covered by the plan.

Mr. Kelaher: I would like to say that they were covered up until January 1, 1956, I believe, when Sherwood Brothers, Inc., merged into Sinclair Refining Company.

We had asked for that information from counsel for some time, and in Philadelphia I wasn't sure of the status

of the arrangements here. But now it appears that Sherwood Brothers, Inc., did handle tires, batteries, and accessories, did receive commissions on Goodyear TBA up until January 1, 1956, and since that time they have received commissions on accessories only, if my information is correct.

Mr. Correa: If you will read the question, it reads in the present. It doesn't read in the past.

By Mr. Kelaher:

Q. Let's say prior to January 1, 1956, with respect to batteries and accessories, and since January 1, 1956, with respect to accessories, if that will clarify it.

1540 Hearing Examiner Kolb: You may answer.

The Witness: Non-sponsored TBA items, non-Sinclair sponsored TBA items, as they have been defined, were displayed in what I would say are conspicuous places in the station. By that I would say Gates fan belts were either hung on the side wall or across the back with the Gates nameplate over them.

Walker filters, we carried Walker filters in a rack which occupied a considerable amount of space, and they were usually displayed out in the lube room.

Champion plugs were kept right alongside the plug cleaner, which is usually out in the lube room.

By Mr. Kelaher:

Q. What is the lube room? That is not the main part of the station?

A. No.

Q. That is the adjacent—

A. That is the main part of the station. The stations are usually divided into an office, where their chemicals are kept, and then—



Q. You say "they were"; are you referring to the current situation, too?

A. Yes. Those items were kept out in the open.

1542

*Cross-Examination by Mr. Correa.*

Q. Mr. Witness: You testified about a conversation you say you had with Mr. Osborn?

A. Yes, sir.

Q. Do you know that Mr. Osborn was a witness here this morning?

A. Do I know that he was?

Q. Yes.

A. Yes, sir.

Q. And do you know that he was interrogated about his changing over from Walker Filters to Purolator Filters?

A. I don't know what he was interrogated about, sir. I know he was here.

Q. Do you know that he testified under oath to almost diametrically the opposite of what you have?

A. No, sir, I don't know—

Mr. Kelaher: Objection to that characterization of Mr. Osborn's testimony in the record.

Hearing Examiner Kolb: Overruled.

By Mr. Correa:

Q. Nobody told you, I take it, then, at any time up to this moment as you sit here, that your version and Mr. Osborn's version of what happened are not consistent with each other?

1543 A. No, sir.

Q. Sir, would you prefer to believe that Mr. Osborn testified under oath as to how this change came about and the circumstances, or what he told you not under oath in a casual conversation?

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: I will sustain the objection. I don't think that is proper cross-examination.

Mr. Correa: I submit it is. The only reason it is improper—

Hearing Examiner Kolb: You had the witness excluded, so he knows nothing about what Mr. Osborn testified to.

Mr. Correa: I want to know what he was told, because this impeaching process is improper to begin with.

Hearing Examiner Kolb: You are asking the witness what he was told, and he said "nothing."

Mr. Correa: I am asking now, would he accept Mr. Osborn's sworn statement about the circumstances, or his unsworn statement.

Hearing Examiner Kolb: I will sustain the objection to that.

Mr. Correa: I submit it is improper.

By Mr. Correa:

Q. You stated that on this occasion Mr. Osborn told you that the offer had been made to him to replace 1544 the Walker oil filters he had, and as well to replace some Firestone equipment he had?

A. That is true.

Q. Oil filters, is that right?

A. That is true.

Q. I think you indicated that he had had those Firestone oil filters for a long time?

A. Yes, sir.

Q. Have you ever offered to replace them?

A. No, sir.

Mr. Correa: I have nothing further.

Mr. Thompson: No questions

Mr. Kelaher: No further questions, your Honor.

Hearing Examiner Kolb: That is all.

(The witness was excused.)

Mr. Kelaher: I can't ask the witness if he would have believed Mr. Collins under oath because Mr. Collins hasn't testified.

Mr. Examiner, they asked that Mr. Smith be held. Do they want to release Mr. Smith at this time?

Mr. Correa: I think in view of the fact that we have hearsay piled on hearsay, there is nothing we can accomplish by the further examination of Mr. Smith. He is not speaking of knowledge either. Apparently, none of these witnesses speak of knowledge. When they are so  
1545 unfortunate to do so, counsel is quick to discredit them.

Mr. Kelaher: I think what you are trying to say is that Mr. Smith is excused, is that right?

Mr. Correa: He is excused.

Hearing Examiner Kolb: Are there any further witnesses?

Mr. Kelaher: Yes, we have, your Honor, in just a moment.

NICHOLAS GOVORUHK was called as a witness and, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Kelaher.*

Q. Will you please state your full name and home address?

A. Nicholas Govoruhk. My home address is 2329 Harford Road, Baltimore 18.

Q. Are you connected with the AA Distributing Company?

A. I am.

Q. And the Baltimore Battery Company?

A. Yes, sir.

Q. What is the relationship of the Baltimore Battery Company to the AA Distributing Company?

A. The AA Distributing Company is a specialty in TBA lines of various products that I get from manufacturers all over the country.

Q. When was the AA Distributing Company incorporated?

A. It is not incorporated. It is a company.

Q. Are you the sole owner of the company?

A. I am.

Q. Would you please state what the Baltimore Battery Company is, and what its relationship is to AA Distributing Company?

A. Baltimore Battery Company, I started that in 1951, in April. Do you want me to go into details?

Q. Are you the sole owner of the—

A. I am, of the Baltimore Battery Company.

Q. Is that a subsidiary related to the AA Distributing Company?

A. That's right.

Q. Do you make a distinction between the AA Distributing Company—

A. Yes, I do. I sell batteries practically only with Baltimore Battery Company.

Q. What products do you sell with the AA Distributing Company?

A. They number quite various.

Q. What type, what lines? Do you sell tires?

A. Well, I sell tires, I sell voltage regulators.

Q. Accessories?

A. A number of things. If you want me to go into detail.

1547 Q. Do you have a line of accessories which are sold by AA Distributing Company?

A. Yes, sir.

Q. So that you sell tires and accessories through AA Distributing Company presently, and you sell batteries through Baltimore Battery Company?

A. That's right.

Mr. Kelaher: Your Honor, I think it should be noted that when I refer to "your company" it means referring to specific products as defined here.

By Mr. Kelaher:

Q. Mr. Govorukh, what line of TBA do you sell?

A. Presently?

Q. Yes, presently.

A. What line of TBA?

Q. Yes.

A. I sell batteries—

Mr. Correa: I object to the question as being outside the scope of the issues of this proceeding.

Mr. Kelaher: I am merely trying to establish at this time what this man's business is.

Hearing Examiner Kolb: Are you withdrawing your objection?

Mr. Correa: Yes, I will withdraw the objection since it is preliminary.

1548 By Mr. Kelaher:

Q. Would you state the principal TBA products sold by your company, the brands?

A. The brands?

Q. Yes.

A. Goodyear, Bowers.

Q. And give the products too.

A. Batteries—Goodyear, I would say about six months from this month I could have sold and have sold a great number of TBA products listed in the Goodyear catalogue.

Q. Are you a Goodyear distributor?

Goodyear TBA distributor?

A. I could at that time have bought anything that they sold at distributor's price.

Q. What time are you referring to?

A. In 1956.

Q. Let's go back and start in 1951 with Baltimore Battery Company. Beginning with 1951, what products did you sell, referring to TBA products?

A. I first started my business in '51 and I got in contact with Goodyear, and they sent a salesman down on Maderia Street at the time, in '51. I think that the gentleman's name was Buckner, who was my salesman at that time.

He was a representative of Goodyear, which is designated as Goodyear Service Store. That is where I was buying my products at that time.

1549 Q. So, that if I understand you correctly, you were buying Goodyear TBA at that time and reselling it, is that correct?

A. Yes, sir.

Q. To what class of accounts did you re-sell Goodyear TBA?

A. I tried to sell it to service stations, trucking concerns, taxicabs, each and everybody that would buy it.

Q. You mentioned Bowers Batteries. When did you begin to sell Bowers Batteries?

A. I practically sold them just as long as I have been in business.

Q. What is your sales territory?

A. I have no specific sales territory. I go as far as Lynchburg, Virginia; Washington.

Q. Do you sell in the Metropolitan Baltimore area?

A. Yes, sir.

Q. And are you the outside salesman for your company?

A. I am one of them.

Q. How many do you have?



A. At one time I had two.

Q. How many trucks or delivery cars do you have?

A. At present?

Q. Presently.

A. I have one car and one truck.

Q. And prior to 1957 did you ever have any more?

A. I had two trucks and two cars.

1550 Q. When was that?

A. In 19—the first part of 1956 to the—I will say the whole year practically of 1956.

Q. Up until that time?

A. Yes, sir.

Q. Do you sell any other brand of batteries besides Goodyear or Bowers?

A. Yes. At the one time I sold the Allied Battery, which is a subsidiary of Price Battery Manufacturing Company.

Q. Is that in Hamburg, Pennsylvania?

A. I think it is.

Q. You stated that you sold Goodyear TBA products since 1951, is that correct?

A. Yes, sir.

Q. Do you compete with other sellers of TBA products in the Metropolitan Baltimore area or other areas, in your sales area?

A. I compete with everybody that is out there.

Q. Could you give us the names of some of the companies with whom you compete in the Metropolitan Baltimore area?

A. You mean service stations or general trade?

Q. All jobbers.

A. R. J. Loock, Hunt, Baltimore Gas Light, Bowers Battery Company, Goodyear.

Q. Do you compete with Brooks-Huff Company?

A. Yes, sir.

1551 Q. Do you compete with Stuart-Pressley?

A. Yes, sir.

Q. Do you compete with Goodyear's own service stores or district stores?

A. Both of them.

Q. Are there Atlantic Service Stations in your sales district?

A. Yes, sir.

Q. Are there Sinclair Service Stations in your sales territory?

A. Yes, sir.

Q. And are there Shell Service Stations in your sales territory?

A. Yes, sir.

Q. Do you solicit it—

Mr. Thompson: Mr. Kelaher, I don't think we have had the territory defined, have we?

Hearing Examiner Kolb: Yes, right at the start he gave it.

Mr. Thompson: I think he said he sold in Virginia, but I don't think it has been defined.

Mr. Kelaher: He said as far south as Lynchburg, Virginia.

By Mr. Kelaher:

Q. When were you first given a Goodyear TBA distributorship?

A. You say TBA distributorship?

Q. Well, a distributorship. Explain what type it is.

A. That is the latter part, which is in December.

1955.

1552 Mr. Correa: May the record show that the witness refreshed his recollection by looking at some papers which he holds in his hands.

By Mr. Kelaher:

Q. In December, 1955, what type of distributorship were you given by Goodyear?

A. I was handed—again, I will refer back to a couple of books here; one is a Goodyear catalogue, which can be gotten in any counter of a Goodyear service store, Mount Royal and Oliver Streets, which is the address listed on this book.

Also, to use the right terms designated here, this says “distributors price” that the service stations would buy the TBA products at the price.

Mr. Correa: May I have the question and answer read back please.

(The reporter read the question and answer.)

Hearing Examiner Kolb: I don't believe the witness finished the answer, had he?

Mr. Kelaher: I don't believe so.

The Witness: There is another book, and how many underneath that, I don't know, which at the time which I got it, in 1956, was a white book that I could buy the TBA products, of which I could re-sell it and make a profit in the yellow book, the distributor's price.

By Mr. Kelaher:

1553 Q. With whom did you talk at Goodyear in connection with your Goodyear distributorship?

A. Bill Allen, which was at that time the manager of Goodyear's service store on Mount Royal and Oliver.

Q. Would you fix that time again, please?

A. That was the latter part of December of 1955.

Q. Do you recall the conversation you had with Mr. Allen at that time?

A. Yes, sir.

Q. Would you please state the substance of that?

A. I specifically mentioned the fact of going into Betho-

line, Sinclair and Shell stations and selling TBA products, especially batteries. He actually did tell me that I could sell them as long as the upper brackets wouldn't get wind of it.

1554 Q. As I understand it, Betholine and Sinclair are one and the same?

A. Yes, sir, at Light and Baltimore Streets.

Mr. Kelaher: Your Honor, Betholine is a brand name used by Sinclair.

Hearing Examiner Kolb: There is no argument. Go ahead.

By Mr. Kelaher:

Q. Thereafter did you attempt to sell—

Mr. Thompson: I think you ought to develop on the record what it is rather than comment on it.

By Mr. Kelaher:

Q. After your conversation with Mr. Allen did you solicit business from Shell or Sinclair service stations?

A. Yes, sir.

Q. And what was your experience?

A. I have here—again referring back to two pages—a suggested retail price list of batteries, by which, taking for example, Double Eagle dry-proof battery, retail suggested for \$29.95; code, which is the price generally distributed to the service stations, they can buy that battery for \$22.41 wet. Dry-charged it is \$21.09, of which a majority of the Shell service stations, if they were handling Goodyear products and not Firestone, had that price list.

1555 Practically all of the Betholine-Sinclair service stations are mailed those, or handed those by their representatives. I got the form number FB-305, of which I can sell that same battery to the service stations for \$19.17, under-pricing my competitors.

Q. And who are your competitors in the Shell and Sinclair markets in the metropolitan Baltimore area.

A. Stu-Pressley, on Washington Boulevard; Brooks-Huff, which I think is out on Reisterstown Road; Goodyear Service Store, Mt. Royal and Oliver; and Goodyear District, Mt. Royal and Oliver.

Q. And what was your experience in—I take it from what you said that you could compete price-wise with Brooks-Huff and Stuart-Pressley, is that right?

A. Yes, sir.

Q. What was your experience in soliciting business from Shell or Sinclair stations?

A. Shortly after a circulation of these special—

Mr. Correa: May I ask at this time—if you will excuse my interrupting—the witness keeps referring in his answer to “these”. I think it would be well to have them marked for identification and the witness could say when he waves the yellow one around or blue one what it is. I am afraid the record will be rather meaningless.

Mr. Kelaher: I ask that the document which I hand the reporter be marked as Commission Exhibit 331. This is a Goodyear battery price list B-304 (11-56), suggested 1556 retail prices, wet charge or dry charge, consisting of a front and prices also being listed on the back.

As Commission Exhibit 332, Goodyear batteries price list B-308 (11-56) effective November 12, 1956, front and back.

As Commission Exhibit 333, entitled “Goodyear battery policy and sales program,” effective October 31, 1951, B-166 (10-51), consisting of four pages.

(The documents referred to were marked Commission Exhibits 331, 332, and 333 for identification.)

By Mr. Kelaher:

Q. I will withdraw the last question and ask this: Based on what you have said, what has been your experi-

ence since you began selling TBA in 1951 with respect to the solicitation of business from Shell, Sinclair, and Atlantic service stations?

A. I would say that I have been blocked by various ways of salesmen from Bethaline-Sinclair, specifically mentioning—I I don't know his exact name, but he is—

Q. Is he present here today?

A. No, not at this instant he is not. He had a territory back in 195—I think it was 1955—on Franklin and Fulton Streets. The service station was then operated by Joseph Rock, of which I sold him Goodyear batteries, Allied batteries. I displayed an Allied decal on his door, and Allied batteries across his window.

1557 The next visit I had after displaying these banners they were down off the windows and the salesman from Bethaline-Sinclair was there and he specifically said that he does not want any other identification other than Goodyear products.

Q. Did you attend a Sinclair dealer meeting in or about 1952?

A. That was one of my first attendances of Goodyear meetings. That one specifically I would say is a Goodyear meeting. They have service station meetings, also. That was held at the Lord Baltimore Hotel on Baltimore Street. At that particular time I found out that I could underprice my competitors and I tried to make a suggestion of seeing if I could sell service stations batteries. And at that particular time Mr. Harry Weller was present at the table, and Buckner was my salesman from Goodyear Service Store, and the invitation or the suggestion I made was declined and then told me that they had Brooks-Huff and Stupressley handling that.

Q. Handling what?

A. Their batteries and the TBA line.

Q. And sales to which service stations?



A. Bethaline, Sinclair, and Shell.

Q. Thereafter did you solicit TBA business from Sinclair and Shell stations?

A. Yes, sir.

Q. What was your experience thereafter?

1558 A. The people that I sold Goodyear products to—Bethaline, Sinclair, and Shell—when I bring the products, Goodyear products to them, if there is a salesman of either Goodyear or the oil companies, they will wave me on until it is clear for me to come in.

I could mention a few that that was done to.

Q. Would you mention those, please?

A. May I look at my records to tell you?

Q. Yes, go right ahead.

A. Tucker's Service station, 1601 West Lafayette Avenue. If I may say—

Q. Is that in Baltimore, Maryland?

A. Yes, sir. If I may say, these people that I am mentioning have no knowledge that I am mentioning their names.

There is a service station at Gay and Patterson, Park Avenue, which is a Betholine-Sinclair Service Station. If you want me to give the ticket numbers of the products that I sold them—

Q. That won't be necessary.

Mr. Correa: That might conceivably identify the documents from which he is reading.

Hearing Examiner Kolb: You might find out whether he is selling the products involved here?

Mr. Kelaher: I think that has been established.

By Mr. Kelaher:

Q. Weren't you soliciting TBA business from these stations?

1559 A. Well, I can say what is on this paper, which is the invoice No. 2373, 7/4/56. Quantity: one: part

number A-217L. Article: Goodyear wet charge. Retail price: \$25.35. I sold it to him for \$17.12.

Hearing Examiner Kolb: That is a battery?

The Witness: Yes, sir.

Mr. Correa: I assume the witness is reading from invoices reflecting sales he made?

The Witness: That is right. Betholine, Sinclair, and Shell service stations.

Mr. Kelaher: As I understand it he is giving instances of names of dealers who have waved him on, and he has returned, is that right?

Mr. Correa: Specifically, he is reading from invoices of sales to these stations. Isn't that correct?

Mr. Kelaher: That is correct.

Mr. Correa: I think that any documents from which the witness reads ought to be marked for identification so that—

1560 Hearing Examiner Kolb: He is using them as a record to give the names of the stations which he called on. You will have an opportunity to see them. He will give the names of them.

Mr. Correa: With great respect I still think the normal rule is as I have stated it.

Hearing Examiner Kolb: There is no use in cluttering up the record with papers. We have enough of them now.

Mr. Correa: I am not suggesting that they be received in evidence, I just ask that they be marked for identification.

By Mr. Kelaher:

Q. Will you state the names of the dealers you called on?

A. Zeigler's Betholine station, 36th Street, which he is

one that actually waved me on when the representatives were there.

Mr. Correa: Is there a date on the invoice?

The Witness: Yes, sir; 7/30/56.

Mr. Correa: That is the vice exactly. I move to strike that testimony, your Honor. It is outside the issues of this case. Counsel keeps doing this. I don't know why, at 20 minutes of six in the evening; when we have all had a long day we have to have stuff like this. It is completely outside the issues of this case. It is a battery sale.

By Mr. Kelaher:

Q. Did you have any similar occurrence, that is, 1561 waving on by Sinclair dealers prior to January 1, 1956?

A. Yes, sir.

Q. After January 1, 1956, were you waved on and later were able to sell accessories—not tires or batteries but accessories?

A. Yes, sir. To service stations.

Q. And Sinclair service stations?

A. Yes, sir.

Q. Does that apply also to any other service stations?

A. Atlantic service stations, Shell, Amoco, Esso, all of them.

Mr. Thompson: I move that the word "Atlantic" be stricken from the answer.

Mr. Kelaher: I think that Atlantic is one of the few that should be included.

Mr. Thompson: That is a serious motion. There is absolutely no foundation for that statement. Under all prior rulings of your Honor, if he is going to mention Atlantic stations, he must name names, places, dates, not just general "Atlantic stations" as he said.

By Mr. Kelaher:

Q. Do you have the names of any Atlantic stations or can you recall the names of any Atlantic stations?

Mr. Thompson: Wait a minute. I have an objection.

Hearing Examiner Kolb: That is a preliminary 1562 question.

By Mr. Kelaher:

Q. Do you recall the names of the Atlantic dealers who waved you on? Would you be in a position to obtain those names from your records?

A. I can actually clearly say that to my knowledge there are no Atlantic service stations that actually waved me on.

Q. There are none? What was your prior statement?

A. I was referring—you asked me if I remember correctly, to whom I was selling my TBA products, and that is why I mentioned Atlantic and Shell and all the service stations.

1563 By Mr. Kelaher:

Q. Have you had any discussions with Mr. Jones, the district manager of Goodyear Tire & Rubber Company in Baltimore, concerning the sale of Goodyear TBA to Sinclair stations?

A. Yes, sir.

Q. Would you state approximately when that conversation took place and what the substance of it was?

A. Precisely the year—you would have to tell me that; I think it has been about three years ago—I was approached, or a gentleman came into my place; which he identified himself to be a fair trades commissioner—I don't know his name.

Q. Federal Trade? I am asking you about a conversation with Mr. Jones. You can answer Yes or No, and if so state what the conversation was.

A. I remember that conversation, not the exact date I couldn't give you, but—

Q. I will show you a memorandum and ask you if this refreshes your recollection?

Mr. Correa: I submit, your Honor, if the witness would put that down, I think that we are entitled to have the witness' recollection exhausted first before any refreshment is engaged in.

Hearing Examiner Kolb: I thought it had been exhausted.

Mr. Correa: Read the last answer.

(Answer read.)

Mr. Correa: He said he remembers the conversation. Let's have his recollection.

By Mr. Kelaher:

Q. Let's have the substance of the conversation. You may use any memo you care to to refresh your recollection, if necessary.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: Let's adjourn until 10:00 o'clock tomorrow morning.

Mr. Correa: Mr. Examiner, may I ask an instruction to the witness that he bring back with him tomorrow the same papers which he had on the table here today, including specifically those invoices?

Hearing Examiner Kolb: You will bring those back tomorrow.

The Witness: Yes, sir.

Mr. Kelaher: Your Honor, at this time I would like to offer Commission's Exhibits 331, 332, and 333 into evidence.

Hearing Examiner Kolb: Is there any objection?

Mr. Correa: No objection.

Hearing Examiner Kolb: The documents will be received in evidence as Commission's Exhibits 331, 332, and 333.

(Whereupon, the documents referred to, heretofore marked COMMISSION'S EXHIBITS 331, 332, and 333 for identification, were received in evidence.)

Mr. Thompson: The exhibits, of course, are taken subject to my objection and motion to strike?

Hearing Examiner Kolb: Subject to motion to strike by Atlantic.

By Mr. Kelaher:

Q. Mr. Góvoruhk, yesterday afternoon I asked you several questions about a conversation with Mr. Jones, 1568 of Goodyear. You stated at Page 1564 of the transcript, "I remember that conversation; not the exact date I couldn't give you, but—"

At that point I handed you a memorandum and asked you if that refreshed your recollection with respect—

Mr. Correa: At that point, if you will just read on, counsel, I objected on the ground, "I think we are entitled to have the witness' recollection exhausted first before any refreshment is engaged in."

And then the Examiner said, "I thought it had been exhausted."

Whereupon, I directed attention to the last answer, the last previous answer of the witness which begins, "I remember that conversation . . ."

I still stand on that position.



Mr. Kelaher: I understood the Examiner to rule that he could have his recollection refreshed by looking at this memorandum with respect to the date.

Mr. Correa: If you infer that from what I just read—

Hearing Examiner Kolb: I thought your question was on the time of the conversation, not the conversation itself.

Mr. Kelaher: I am talking about the time of the conversation.

Mr. Correa: I submit, if your Honor please, on this kind of thing, that we ought to have the witness' recollection as to the conversation refreshed. I don't know 1569 what this paper is that counsel is so anxious to prod the witness with. I do think I would like to have this man's testimony from his recollection, and then his recollection refreshed, if the need therefor appears.

Hearing Examiner Kolb: I agree with you so far as the conversation itself is concerned. We are concerned now only with the time of the conversation.

Mr. Correa: May I see the paper that it is proposed to exhibit to the witness before it is exhibited to him?

Mr. Kelaher: I think I have the right to show it to the witness, haven't I, your Honor?

Mr. Mason: Can't we see it first?

Hearing Examiner Kolb: He said he remembers the conversation.

Mr. Kelaher: But not the date. I am asking him to refresh his recollection as to the date.

(The document was handed to Mr. Correa.)

Mr. Correa: It is quite obvious that the purpose of this is to prompt the witness as to the conversation. I have stated my position. I assume your Honor will rule.

Hearing Examiner Kolb: Are you referring to the conversation—the pencil notation here at the bottom—the pencil notation?

Mr. Kelaheer: This is the conversation (indicating). I am referring to this down here, yes.

1570 Hearing Examiner Kolb: Turn it over to him and show him that, and not the contents of the letter.

By Mr. Kelaheer:

Q. Does that memorandum refresh your recollection as to the date of your conversation with Mr. Jones (handing to witness)?

A. Yes, sir.

Q. What is that date?

A. April 4, 1956.

Mr. Correa: May I ask that the document just exhibited to the witness be marked for identification at this time?

(Whereupon, the document referred to was marked Commission's Exhibit 334 for identification.)

By Mr. Kelaheer:

Q. Mr. Govoruhk, would you please state the substance of the conversation in question?

A. I was at the Bowers Battery Company at Battery Avenue, after which I made a phone call to Goodyear, Mount Royal Avenue, and asked to talk to the district manager of Goodyear.

The secretary of Bowers Battery Company—her name is Hilda Zadlick—was on an extension taking notes—

Mr. Correa: Just a minute.

Mr. Kelaheer: Your Honor, I think the witness should be permitted to answer. If they are going to keep heckling him, I don't think we are going to get very far.

Mr. Correa: Of course, counsel just happens to be  
1571 tendering illegal evidence under the case of the United States versus Fallon and the United States versus Polakofs, in the Second Circuit, as counsel is doubtless aware, unless it is properly qualified.

Your Honor appreciates that under the holding of those cases this is a violation of the Communications Act, unless it is shown that the other party to the conversation was aware that the conversation was being intercepted.

Hearing Examiner Kolb: Is this man testifying as to a conversation which was listened to over the phone or is he testifying to the conversation he had?

Mr. Kelaher: As Mr. Correa knows, he is testifying to a direct conversation he had with Mr. Jones. He mentioned that someone was listening on an extension.

But the cases cited by Mr. Correa are not in point because we are not putting in a wire-tapping transcription of a conversation. This is this witness' conversation.

Hearing Examiner Kolb: Okay, proceed.

Mr. Correa: In the case cited, however, the party to the conversation was held not entitled to testify to it because of the illegality.

Mr. Kelaher: We can argue the legality later.

Hearing Examiner Kolb: Proceed.

By Mr. Kelaher:

Q. Will you go right ahead, Mr. Govorukh?

1572 A. I called up Goodyear, and a gentleman who identified himself was Mr. Jones, district manager of Goodyear. I asked him and told him about the opposition that I received from going into the Betholine and Sinclair stations in selling batteries and asked him if there was any way that I could overcome that opposition.

He proceeded in telling me that Brooks-Huff was an established point of distribution for Goodyear products, and they have to protect him by all means at their power of other opposition coming into their territory, of which that letter that I recognize my signature of that date, Mrs. Zadlick typed the conversation with her notes that she took, and I signed that letter.

Mr. Correa: If your Honor please, I move to strike the witness' answer because the witness says this conversation took place on April 4, 1956, and that it related to the difficulty the witness alleges he was having going in, as he puts it, to Sinclair stations.

Your Honor will recall that at that time the only sales commission plan involving Sinclair applied only to accessories.

So unless this conversation and the difficulty and the whole subject is made responsive to the issues of this case—assuming it can be so made—I move to strike it.

Hearing Examiner Kolb: Is that a preliminary 1573 question in which he specified the products involved?

Mr. Kelaher: The products involved were Goodyear TBA products.

I think they are drawing a pretty fine line if we are trying to show control and influence with respect to accessories, and not with respect to tires and batteries, in a conversation of this type. Here is a Goodyear TBA distributor trying to get into the market.

Mr. Correa: If your Honor please, I don't understand this talk about a fine line. Either the T and the B—the tires and batteries—were under the plan or they weren't.

Counsel has conceded, as indeed he must concede, being the honest man that he is, that the tires and batteries were not under the plan at this time or at any time thereafter.

How can we have testimony about something that is not under the plan as a means of bolstering a case or attempted case with respect to things that are covered with the plan is something which completely eludes me.

Mr. Kelaher: I think it should be recalled that these Sinclair stations were under the plan until January 1, 1956, and this witness has testified that he has been unable to get in during all of that period.

So it doesn't seem proper to me that he should be re-

stricted or his answer should be restricted when a conversation took place four months after they decided 1574 to handle accessories only under the sales commission plan. The complaint alleges that the oil companies controlled and influenced their dealers.

Hearing Examiner Kolb: The objection will be overruled. Let's proceed.

Mr. Correa: Do I take it, your Honor, that we are going into evidence relating—

Hearing Examiner Kolb: You say after a certain period in 1956 only accessories were involved.

Mr. Correa: That is conceded, is it not?

Hearing Examiner Kolb: That is conceded. It has been in the record three or four times yesterday. We are not concerned with that.

If this man tries to sell tires, batteries, and accessories and testifies to that, you can't stop him because it happens to be tires and batteries involved with accessories.

Mr. Correa: The testimony, insofar as it relates to tires, batteries, is immaterial, irrelevant, and prejudicial, if I may say so.

Hearing Examiner Kolb: It has nothing to do with this case. I don't think so.

Mr. Correa: Furthermore, there has been no evidence that he sold any accessories.

Hearing Examiner Kolb: I don't know. We have had so many objections, I don't know what this witness 1575 has testified to.

Mr. Correa: If your Honor please, I feel obligated to discharge my duty to my client, whether that requires many objections or few. I suspect if counsel would ask his questions—

Hearing Examiner Kolb: I agree with you Mr. Correa, but I also think you should make your objections after

the witness has testified or before, and not during his testimony.

Mr. Correa: I think I have avoided that pretty much, but I shall endeavor to continue to do so.

By Mr. Kelaher:

Q. I would like to ask, at Page 1557 of the transcript, a name you gave yesterday, it quotes you as saying that a "Mr. Hooker was my salesman." I believe you said "Bucher," is that correct?

A. That is correct.

Q. Is it B-u-c-h-e-r?

A. I think it is. The gentleman is right down there.

Mr. Kelaher: That is all, your Honor.

Mr. Correa: If your Honor please, before we commence cross-examination, I should like to have the opportunity of inspecting the papers which the witness testified from yesterday, additional to the price lists which have been marked and received in evidence.

Hearing Examiner Kolb: All right.

1576 Mr. Correa: Could we have a short recess for that purpose?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Thompson: Before there is any cross-examination of this witness, may I call your attention to the fact that his testimony was received subject to Atlantic's objection, and I now move to strike the testimony.

The testimony is obviously unrelated to any issue or charge in the complaint against Atlantic Refining Company. I assume your Honor doesn't wish to rule upon that motion at the present time, and that I may press it at a later date.



Hearing Examiner Kolb: The testimony will be received subject to a motion to strike by Atlantic.

Mr. Correa: If your Honor please, I should like, before commencing any cross-examination of this witness, to have the record show the following, and that I make formally to your Honor the following request:

This witness testified yesterday and in so doing had before him a bundle of small oblong papers, apparently invoices which he keeps thumbing through and turning over as he was testifying and examining as he was testifying.

1577 Before we recessed and at the close of the witness' direct testimony I requested a recess so as to enable me to examine those papers in preparing for the cross-examination of this witness.

Your Honor will recall that this witness is one of these so-called "mystery" witnesses and consequently we have had most limited opportunity, if it can be called that at all, to prepare for cross-examination. We were nevertheless prepared in the interests of expediting this proceeding to go ahead.

Now, it appeared in the recess that the witness declines to turn these papers over to us for examination, saying in substance—and I think more or less exactly, and he can correct me if I misquote him—"You tell me which ones you want and I will give them to you." The answer to that is easy; I want them all.

If your Honor please, before going further on this matter so that we may be perfectly clear that we are not just stumbling over some technicality, I take it that there is no necessity for me to ask your Honor to issue a subpoena duces tecum, returnable forthwith to this witness calling for the production of these papers.

Hearing Examiner Kolb: That is not necessary.

Mr. Correa: I take it your Honor's direction to him is.

the substance if not technically equivalent to that.  
1578 And I submit, if your Honor please, that we are entitled to have this. We are entitled to have adequate opportunity for cross-examination as that is recognized in courts of the United States. That is an indispensable element of the right to a fair trial, of issues of importance to my client, and I submit further, if your Honor please, that the vaunted liberality of procedure in proceedings of this character—and we have and, I submit, with great respect, some rather extreme examples of it in terms of the type of testimony received—should be a two-way street.

It should not just be a one-way street which continues when counsel supporting the complaint wants to do something or examine something, but then shut down in the most narrow technicality when counsel for the respondent wishes to obtain production or inspection of papers essential to a proper cross-examination.

I respectfully move, your Honor, to direct the witness to hand over the papers for examination and that we have again a short recess to enable us to complete that examination which I do not contemplate is a lengthy affair.

1579 Hearing Examiner Kolb: The testimony of the witness was with reference to those stations or operators who had waved him on when he came in to deliver or to take an order. He went over his invoices to locate the ones who had done that. He testified as to the Tucker Service Station, a service station at Gay and Patterson, and Zeigler's Betholine Station at 36th Street. Those are the only three he testified to as having waved him on when he came to the stations. As to those, I will direct the witness to produce and give counsel for examination the invoices or reference to Tucker Service Station, Betholine Sinclair Station at Gay and Patterson, and the Zeigler's Betholine Station on 36th Street.

Mr. Correa: May I respectfully suggest to your Honor that precisely we are interested in the ones that didn't wave him on, and in establishing in the record what they are.

Hearing Examiner Kolb: I don't think you have a right to go over every document he has in his possession just because he testifies to three. You are entitled to see the ones testified to and nothing more and nothing less. That is my ruling, so we will go ahead from there if you want to look at them.

Mr. Correa: I must add to the record so there will be absolutely no doubt of my record here. I conceive this to be an invasion of my client's constitutional rights to a fair trial of these issues, and that we are hampered 1580 in cross-examination in a way which prevents us from conducting effective cross-examination or any cross-examination—

Hearing Examiner Kolb: You have made that speech before; so, let's go ahead.

Mr. Correa: Any cross-examination we conduct is made without waiving that objection.

Hearing Examiner Kolb: Do you want to see the documents which I have directed?

Mr. Correa: Yes. I would like to see whatever we can see. I would like to see more.

May I at this point formally request your Honor to issue a subpoena duces tecum to the witness for his invoice covering the period 1954 to date.

Hearing Examiner Kolb: No. I have required the witness to produce everything that is necessary on cross-examination at this time.

Mr. Correa: I am requesting—

Hearing Examiner Kolb: If you want to call the witness as your witness and make him your witness and ask

for a subpoena in that connection, I will be very glad to issue a subpoena.

Mr. Correa: I am asking for a subpoena in connection with cross-examination.

Hearing Examiner Kolb: No. I have taken care of cross-examination.

1581 *Cross-Examination by Mr. Correa.*

Q. Mr. Witness, would you be good enough to state for the record what documents you have before you?

Mr. Kelaher: Objection, your Honor.

Mr. Correa: Am I not to be permitted—

Hearing Examiner Kolb: Let me hear the question. (Question read.)

Hearing Examiner Kolb: Objection overruled.

The Witness: I may answer?

Hearing Examiner Kolb: Yes.

The Witness: These documents consist of invoices to various places that I sold my TBA. They consist of invoices of products that I have bought from Goodyear. They consist of tires that I bought from Lee Tire and Rubber; batteries that I bought from Allied Battery Corporation.

By Mr. Correa:

Q. When you say tires, do you mean invoices representing tire purchases?

A. The actual invoices from the companies themselves and my own records. And I have invoices here, or literature, of the TBA that I sell myself. It consists of trucking concerns. It is quite a lot. I mean I have a whole file of them if you want them at home.

Mr. Kelaher: He is just asking what you have 1582 in front of you.

By Mr. Correa:

Q. I am just asking you with respect to the documents you have lying on the table in front of you, excluding the price list and catalogues.

A. Do you want the names or the general—

Q. I think you have given me what I wanted. Now, I want to ask you one or two other questions for identification.

One, how many separate pieces of paper are there?

A. Do you want me to count them?

Q. Yes, if you would be so good.

A. The invoices that is?

Q. Yes.

Mr. Kelahe: Your Honor, I object to this line of questioning. It is quite obvious that counsel is attempting to circumvent your ruling. If he wants to call this witness as his own witness, at the proper time, then, he should do so. I don't think he should circumvent your ruling by going through this procedure.

Hearing Examiner Kolb: If he wants to show I am wrong, let him show it.

Mr. Correa: I want at least to lay a proper factual foundation.

Hearing Examiner Kolb: I am letting you do it.

The Witness: You want me to count each one of them?

1583 By Mr. Correa:

Q. If you would be so good.

A. Some of them are duplicates. Seventy.

Q. Seventy pieces of paper. And can you tell me, sir, what period of time they cover?

A. Roughly?

Q. As accurately as you can be.

A. They are all mixed up.

Q. They are not in chronological order, I take it?

A. No.

Q. Perhaps, if you could run through them and tell me what years?

A. 11-3—1954; 12-10—'56; 1-10—'56; 12-10—'56; 12-8—'55. In my briefcase I have some actually from last week.

Q. I am not asking about the ones in your briefcase; although I may say I would be glad to have them, too. I take it the ruling would extend to them and this sample is sufficient for my purposes of the record.

Now, sir, one further question with respect to these papers. You have told us that they reflect purchases—among other things some of them reflect purchases by you of tires, batteries, and accessories from various suppliers. May I now ask you, do they also reflect sales to service stations of Sinclair?

A. That is what I was fumbling through yesterday 1584 and pulling out the ones that were referring to Sinclair stations. I was excluding the others.

Q. These that you produced—

A. There are some of them. There are more that I haven't brought out. I just brought some out.

Mr. Kelaher: I think you ought to limit the—

Hearing Examiner Kolb: He is talking about the ones on the table.

Mr. Kelaher: He is talking about these right here and no others, as I understand the question. Is that right?

Mr. Correa: I appreciate your assisting the witness, counsel.

The Witness: There are a few that I have at the present time here. I think they are all of them.



By Mr. Correa:

Q. In this batch we are engaged in identifying, are there any other invoices which represent sales to Sinclair service stations?

A. Not to my knowledge.

Q. Are there any invoices which represent sales to Shell service stations?

A. Not in this batch, there isn't.

Q. Are there any invoices which represent sales to Atlantic service stations?

A. No, not here. Not in this.

Q. There seems to be a little confusion at our 1585 table. Do I infer, sir, that all of these invoices that represent—in the group before you that represent sales to service stations, represent sales to Sinclair service stations?

A. No, sir.

Q. These three which you have handed me—which for identification purposes I will indicate are dated respectively, 7/30/56, 7/4/56—

The Witness: I work on the fourth of July.

Q. (Continuing.) —7/4/56, and 7/6/56—are they all of the invoices representing sales to Sinclair service stations which were in the group you had before you when you testified yesterday?

A. That is the ones that waved me on in this group, yes, sir.

Q. That isn't an answer to my question.

Read the question.

(Question read.)

A. Yes, sir.

Mr. Correa: I shall ask that these three invoices be marked for identification at this time.

Hearing Examiner Kolb: As Commission's Exhibits?

Mr. Kelaher: I would prefer to have them in as Com-

mission Exhibits if they are going in as this witness's testimony.

Hearing Examiner Kolb: In order to keep them together, do you have any objection to that?

1586 Mr. Correa: I am just asking at this time that they be marked for identification. I don't care how they are marked, just so they are identified.

Hearing Examiner Kolb: They will be marked Commission Exhibits 335, 336, and 337.

(Whereupon, the documents referred to were marked Commission Exhibits 335, 336, and 337 for identification.)

By Mr. Correa:

Q. Now, sir, you have testified, as I recall it, that you are in the business of distributing tires, batteries, and accessories in a territory which you told us extends as far south as Lynchburgh, Virginia?

A. Yes, sir.

Q. What are the other boundaries of that territory, sir?

A. Well, I go all over Maryland. Lynchburgh, Virginia, I call them dropping off points. I don't specifically know what territory you are looking for.

Q. I am looking for the territory in which you distribute, according to your testimony, tires, batteries, and accessories.

A. Virginia, Maryland, Washington.

Q. By Washington, you mean the District of Columbia?

A. Yes, sir.

Q. Is that it?

A. That is practically it.

Q. Is that a fair definition of it?

1587 A. Yes.

Q. Are you in any other business?

A. What are you talking about, any other business?

Q. In addition to your business of distributing tires, batteries and accessories, have you any other business that you carry on simultaneously with that business?

A. I buy automobiles and sell them, too.

Q. Any other business?

A. It depends on the circumstances. I will buy anything that I can sell for a profit, if it is legal.

Q. When you say that you buy automobiles and sell them, I take it you buy second-hand automobiles and re-sell them in the second hand market?

A. Yes, sir, and junk them too.

Q. And sometimes sell them for junk?

A. Yes.

Q. And you say, in general, you would buy any kind of merchandise which you can re-sell at a profit?

A. Even fix automobiles.

Q. You also do automobile repair work?

A. Yes, sir.

Q. Is there any other aspect of your business which you haven't mentioned?

A. I was in the real estate business, if you want to know. And I can still sell real estate if I have the opportunity.

1588 Q. Let me confine it timewise to 1954, '55 and '56, unless maybe the real estate business was in those years?

A. No. That practically covers the scope of my field.

Q. Don't you repair batteries?

A. Yes, sir. You said batteries.

Q. I said distribution of tires, batteries and accessories. I am sorry if I misled you. But you do repair batteries, don't you?

A. Yes, sir.

Q. Fixing your attention, if you would be so good, on the years 1954, '55, and '56, and '57 up to date, how have you allocated your time during those years between these various activities in which you have engaged?

A. That is a pretty lengthy thing to say. Just like

yesterday I testified and I worked until five o'clock this morning fixing my batteries.

Q. -We can exclude testifying, I think, unless you do that on some regular basis, too.

A. I go out in the morning and I deliver my batteries and I make sales, take orders on the telephone, I send <sup>post</sup> cards out for the various items that I have, some that I am trying to get for import from overseas now. I forgot to tell you that.

Q. You are also an importer?

A. I hope to be.

Q. That, I take it, is in prospect, so that need not concern us here.

1589 A. There is money involved already. I don't know what you term that to be.

Q. I wish you all possible success in making money in the import or any other business, Mr. Witness. But what I am really trying to get at is the business you have testified about on direct, your tire, battery, and accessory distribution during these years that I have mentioned, and specifically what I am trying to find out is how much time you had available to turn to that business in view of your other activities?

A. My wife tells me that she is going to divorce me because she only sees me now and then. Sometimes I only get two or three hours of sleep for three or four days.

Q. Probably you wife would be a better witness to answer that?

A. Probably would be, sir. I sleep downstairs with my business most of the time.

Q. How extensive would your battery repair business be?

A. Do you mean percentagewise?

Q. Yes. Can you give me an estimate, say out of a

nomal work week, which I gather in your case is a great many hours, what—

A. Seventy-five percent.

Q. —time is engaged in the battery business?

A. Seventy-five percent.

Q. What percentage of your time would be engaged 1590 in the second hand automobile business.

A. That—now, you have to take that in the course of three years. I have only bought about three automobiles in three years.

Q. Then, that we could say probably would be fair to say was sporadic and timewise, not a very important part of your business?

A. That's right.

Q. Would that go also for your general purchasing and reselling of what we might call general merchandise, for lack of a better name?

A. No, sir.

Q. Sir?

A. I don't quite understand your point, but I don't think you are right. But if you rephrase it—

Q. I have no point sir. I am just trying to get some information as to the allocation of your time.

A. I said 25 percent of it is devoted to TBA.

Q. Then, we have 25 percent devoted to TBA, and 75 percent to repairing batteries?

A. That's right.

Q. And the excess beyond a hundred percent is devoted to these other activities?

A. If I were another man. I wish I were.

Q. You say you handle tires, batteries, and accessories?.

1591 A. Yes, sir.

Q. Of your TBA operations, what percentage is accounted for by batteries?

A. If you want my auditor, he can tell you better than that. That is his department, not mine.

Q. Unfortunately, we don't have him here, or his records, and apparently we are not very successful in getting access to your records; so, will you give us your best estimation of that?

A. I wouldn't even venture to say. That is not my department. That is my wife's and my auditor's department. I don't even go into that. That is, my business here, TBA and fixing batteries. I just leave that to them. I wouldn't even go into that.

Q. So you don't—

A. No, sir. If you want my income tax returns, it will tell you.

Q. No, I just wanted to know. Here you are selling three types of—

A. If you want a record of a pin point of a fact of how many batteries I sold in a period of three months, I can give you an invoice.

1592 Q. I would like you to reflect back over these past three years which is essentially what we are talking about, and see if you can tell me, has your business been preponderantly in batteries, very little in batteries, preponderantly in accessories, preponderantly in tires—

A. If you say \$30,000 of batteries in one year is preponderant or punitive, you can.

Q. What I mean is for the most part in batteries?

A. Now, you are talking about dollarwise or what?

Q. Well, you can definite it either way. Unitwise or dollarwise.

A. That is pretty hard to define.

Q. Take it dollarwise.

A. That is still <sup>hard</sup> to define. I can take a hundred dollars and buy junk batteries from now to doomsday be-



cause I turn them over, I sell them, repair them, junk them, scrap them and buy parts.

Q. What is a junk battery?

A. That is a trade secret, if you don't mind. I would rather not stipulate that, unless I am forced to.

Q. I am not really trying to guess your trade secrets. I am trying to get some concept of your business. Would it be a used battery which you buy and rebuild and then resell?

A. Yes, sir.

Q. As a reconstructed battery?

1593 A. It might not even be a used battery. It might be a new battery not even put in a car. Would you classify that as a used one?

Q. Would you classify that as a junk battery?

A. They sell them to me as junk.

Q. Is it true that the batteries—and my people are looking at me because they realize I am a little over my head—is it true that a battery, that is a new battery, after it has been in stock, not used for a certain period of time, <sup>deteriorates</sup> ~~deterioration~~ in some way?

A. Even a dry-charge battery; yes, sir.

Q. So that when you say you buy new batteries, or they sell you new batteries for junk, you really mean batteries that because they haven't been moved have deteriorated to some extent?

A. Well, I put it this way: They think that the batteries that they sell me are junk, or not usable.

Q. But you know better?

A. I hope to. That is my business, just like you are a lawyer.

Q. Now, sir, how about accessories; what kind of accessories do you sell?

A. They vary quite a lot. You are talking about electric irons, drills, your whole TBA line and other things

too. Here is your Goodyear catalogue, Pliobond, shotguns, outboard motors, fans.

1594 Mr. Kelaher: I would like the record to show that the witness is reading from a Goodyear car and home merchandise catalogue, with the name Goodyear Service Stores, Mt. Royal and Oliver Streets, Baltimore 17; Maryland, spring and summer 1957, on the cover.

Mr. Correa: I take it there is no objection to our looking at that with respect to the witness' cross-examination.

Mr. Kelaher: I assume you have that right.

Mr. Correa: As has been pointed out to me, just for the sake of clarifying the record, a copy of this has already been marked in evidence heretofore as Commission Exhibit 246.

By Mr. Correa:

Q. Is that the 1957 one?

A. No, sir, this is 19—yes, summer and spring of 1957.

Q. It is identical with the exhibit. I take it from your answer, seriously, that you distribute all kinds of products?

A. I even bought anti-freeze from Goodyear and resold it to service stations, which is in the catalogue.

Q. Can you give me some notion of what your volume of business in dollars has been in TBA, let's say for the year 1955?

A. I wouldn't actually go into that, as I told you.

Q. Do you mean you know and won't tell us?

A. No, I don't know, actually.

Q. You have no notion?

A. Not—

1595 Q. Is it \$100,000 a year?

A. No, I am not that rich.

Q. Is it \$5,000?

A. More than that. As I said, vaguely I would say it is about \$30,000.

Q. You say about \$30,000?

A. Yes, sir.

Q. When you spoke of your sales of accessories in relation to the Goodyear catalogue, did you mean to imply that all the accessories you sell are Goodyear accessories, or do you also buy accessories for resale from other suppliers thereof?

A. I buy them from other suppliers.

Q. How about batteries, do you buy them—

A. I buy them from—just the same as Goodyear buys their batteries. They are not specifically from one manufacturer.

Q. And tires, do you deal also in tires?

A. Yes, sir.

Q. Where do you buy your tires?

A. I bought quite a few, at one time I bought \$6,000 worth, from Dunlop Tire & Rubber Company. Then I buy them from U.S. I buy them from anybody that the price is the lowest at the time that I need them.

Q. Mr. Witness, at page 1551 and 1552 of the record you testified in substance that you were given a Goodyear TBA distributorship in December 1955. And at page 1596 1552 you said that in connection therewith you were handed a copy of CX-246 and certain other papers which have been heretofore marked in this record as CX-333 and 331 and 332.

A. Here is another one if you want.

Q. I am sorry you couldn't have been handed CX-246 because that is the 1957 catalogue, and we were talking of 1955. I assume you mean the then current edition.

A. Yes. I am going to Goodyear today so I will get a new one.

Q. Now, sir, is your distributorship evidenced by any contract or agreement?

A. Here is an invoice from Goodyear, if you can call that an agreement.

Q. I am almost afraid to ask. Can I have that invoice?

A. You can borrow it. If you will give it right back to me.

Hearing Examiner Kolb: He said you can have it if you will give it back to him.

Mr. Correa: That is not very good.

The Witness: Do you want it broken down a little more?

Mr. Kelaher: May I see that, too, your Honor?

Mr. Correa: Yes. (Handing to counsel.)

Mr. Kelaher: I think they should be marked for identification, your Honor.

Mr. Correa: It is all right with me. I would be delighted.

1597 Hearing Examiner Kolb: Commission Exhibits 338 and 339.

(The documents referred to were marked for identification Commission Exhibits 338 and 339.)

By Mr. Correa:

Q. Sir, you have shown me in response to my question these exhibits for identification, CX-338 and 339. Let me ask you, referring to CX-339, which is an invoice covering I believe purchase of a battery, is it not?

A. That is right.

Q. (Continuing.) —is that a fairly typical invoice of your battery purchases?

A. That is at the time.

Q. And the invoice appears to be dated December 27, 1955. Commission Exhibit 338 for identification looks to be part of a form.

A. Do you want me to clarify it?

Q. Yes, I would appreciate it if you would be so kind.

A. That is a statement that they send me for the purchase of those batteries, of which one-third is paid in the month of January, one-third in the month of February and one-third in the month of March.

Q. Thirty, sixty and ninety terms.

A. Approved by the credit department of Goodyear.

Q. Is there any limitation on your credit?

1598 A. Look it up in Dun & Bradstreet. It is in there.

Q. I mean the Goodyear point at which you buy.

A. Not to my knowledge. I don't know.

Q. Not that you know of?

A. I go there and just sign for anything that I want.

Q. Do you have a dealer franchise agreement? Good-year dealer?

A. You are talking about a regular form?

Q. Yes.

A. Never have.

Q. Did you have any kind of agreement reflecting this distributorship you say you had?

A. From the managers of the service stores; yes, sir.

Q. Let me exclude oral agreements. Any kind of written agreement.

A. You have the papers there of my power of buying through that limitation of discounts.

Q. Other than these papers which you have produced, CX-338 and CX-339, you have no written agreement?

A. If you want to call getting proper identification to identify service stations with Goodyear matters and all, the contract that I can send to Goodyear with a form, to get any kind of identification that I care to, that is a contract, I think.

Q. Do you have any form of agreement, either—

A. This is an agreement (indicating).

1599 Q. (Continuing.) —which is signed by you and signed by Goodyear?

A. That is signed by Goodyear and I just send it to them.

Q. May I see them?

A. Yes. (Handing to counsel.)

Q. The papers you handed me appear to be all forms—

A. That has to be approved by Akron.

Q. Unexecuted forms.

A. That has to be approved by Akron for me to receive that kind of merchandise, advertising.

Q. Other than these unexecuted forms and Exhibit CX-338 and 339, you have no written agreement reflecting your distributorship which you have testified about at page 1551 and 52 of the record?

A. If you want to call letters and all coming from Akron about the sales and various things, they give them to me automatically every month.

Mr. Kelaher: Your Honor, I ask that these documents—

Hearing Examiner Kolb: I don't think there is any need to clutter the record.

Mr. Correa: I tried to avoid that.

Mr. Kelaher: Let's read them into the record.

Hearing Examiner Kolb: I see no reason for it. He is trying to find out if he has a formal agreement.

1600 By Mr. Correa:

Q. Mr. Witness, you testified at pages 1552 and specifically at 1553 of the record that when you were given a Goodyear TBA distributorship in December, 1955 you had a conversation with a Mr. Allen in which you mentioned—in the course of which you mentioned the fact of going into Betholine, Sinclair, and Shell stations and



selling TBA products, especially batteries. And you went on to say "He actually did tell me that I could sell them as long as the upper brackets wouldn't get wind of it."

Now, you have also testified this morning that thereafter—and on April 4, 1956—you telephoned a Mr.—you telephoned the Goodyear district office, and talked to—whom did you say?

Don't you remember his name, Mr. Witness?

A. I haven't talked to the gentleman that much. I mean I have a lot of names and all to remember.

Q. You don't remember his name?

A. Not offhand.

Q. Are you refreshing your recollection?

A. Yes, if you would like.

Q. Not if you put—

A. You have it. This is a photostat copy of your letter.

Q. What is the number?

A. I don't know your number.

1601 This is a photostat copy of what you have.

Hearing Examiner Kolb: It is Commission Exhibit 334.

Mr. Correa: The witness is referring to Commission's Exhibit 334.

The Witness: I think his name is Jones, without even looking at it.

By Mr. Correa:

Q. Do you know what Mr. Jones's position was in April, 1956?

A. He told me his position was district manager.

Q. You had been a Goodyear distributor for some four months at this time—three or four months?

A. In the terms of the power of my buying; yes, sir; buying power.

Q. In terms of your testimony is what I was referring to.

A. All right.

Q. In that connection had you had any connection to deal with the district manager?

A. No, sir.

Q. In any event you say you called Mr. Jones on April 4 and that you, at the time you called him, were at the place of business of the Bowers Battery and Spark Plug Company, is that right?

A. Yes, sir.

Q. And who was present?

A. When I made the phone call?

Q. Yes.

1602 A. Hilda Zadlick.

Q. Go ahead.

A. Mr. Sanders, which is the manager of Bowers Battery Company. Vick, who is a salesman at Bowers Battery Company.

Q. First name only?

A. He has a subpena. You will see him Thursday.

Q. Do you know his last name, sir?

A. No, I don't.

Q. You know him only as Vick?

A. Right.

Q. Anyone else?

A. There was—if I may ask the question of the gentleman from the Commission at the time the government was there. He wasn't present at the time I made that phone call.

Mr. Correa: Would you read that answer?

(Answer read.)

By Mr. Correa:

Q. Who—

A. How did I make it? There were various rooms. I made it in one room and he was in another.

Q. Who was the last gentleman you say—

Mr. Kelaher: Objection, your Honor. If he wasn't physically present when the call was made I see no point in going into that.

Hearing Examiner Kolb: Apparently he was 1603 present at the time, even though he wasn't in the room at the time the call was made.

By Mr. Correa:

Q. I would like to get his name, if I could.

A. I would have to ask this gentleman because he got it—

Mr. Kelaher: According to our record it was Donald V. Brady, attorney adviser, present at the Bowers Battery office that day. Mr. Brady, I might add, has since died. I think he died last year.

Mr. Correa: We might as well have that in the record, that he is unavailable as a witness.

By Mr. Correa:

Q. How did you come to make the call, sir?

A. I got a little disgusted with the fact of going out to these stations and couldn't get anywhere with them, and he is over the service station manager. He is the authority actually in Maryland. So I wanted to know.

Q. Did anyone present suggest you make the call?

A. No, sir. It was my own suggestion.

Q. Did you discuss with Mr. Brady that you were going to make the call?

Mr. Kelaher: Objection.

Hearing Examiner Kolb: Objection overruled.

A. I didn't discuss with him that I was going to make it. I just said that well—may I say how this came about, more or less? I met Mr. Brady about four months 1604 ago. Before that.

By Mr. Correa:

Q. Four months before this?

A. Yes, sir. He asked me about complaints that he has received from various service stations, that I am able to sell them merchandise in the TBA line at a price less than they are getting it at that time. And that is how Mr. Brady got in contact with me. And at that time, April 4, I saw him down Bowers. So I just was disgusted, I was out that day, in the morning, I hit a couple of stations and I was disgusted. So I called up the manager. And that is what he told me.

Q. What did you say to Mr. Brady before you called up Mr. Jones?

Mr. Kelaher: Objection, your Honor. I see no need to go into his conversations with Mr. Brady at this time.

Hearing Examiner Kolb: Overruled.

A. I just told Mr. Brady that I was fed up with the whole doggone business and I was going full hog with him and just give him the testimony to the best that I can possibly give him, and I proceeded in calling up, making two phone calls at that time, at that day.

By Mr. Correa:

Q. Mr. Witness, could you please stay on the point? I realize this may be difficult for you. You made a phone call which is reflected, I take it, in this Exhibit CX-334? 1605 A. Yes, sir.

Q. Before you made that phone call you were present at the office of this Bowers Company, and present also was this Mr. Brady and Mr. Sanders?

A. Yes, sir.

Q. My question is, as it has been, did you have any conversation with Mr. Brady before you made the call about the call?

A.. Not about the call; no, sir.

Q. Did you tell him you proposed to make a call?

A. No, sir.

Q. Then you told him you were going to testify?

A. I told him that I was going to—I got fed up and that I was going to give him all the assistance that is needed in whatever I can to help him in any way.

Q. But you didn't tell him you planned to call Mr. Jones?

A. No, sir.

Q. And then Mr. Brady left, did he?

A. No, sir. He was talking to Mr. Sanders, which is the manager there, and I just went in the other room, and that is when I made the phone call. I asked the assistance—

Q. Mr. Brady was in the adjacent room when you made the phone call?

A. Yes, sir.

Q. When you made the phone call where was Miss—I assume it is Miss Zadlick—

1606 A. She was at the extension right with me.

Q. You asked her to listen?

A. Yes, sir.

Q. Did you ask her to make any notes of what she heard?

A. Yes, sir.

Q. She did?

A. Yes, sir.

Q. And did you advise Mr. Jones that you had someone listening in and recording the conversation?

A. He didn't know that at the time. He was in the other room.

Q. Mr. Jones?

A. Oh, Mr. Jones?

Q. Yes.

A. No, sir.

Q. You didn't tell him that?

A. I don't think it was any of his business at the time.

Q. When you finished the telephone conversation did you go back into the room where Mr. Brady and Mr. Sanders were?

A. No, sir. I made another phone call.

Q. And when you finished that other phone call did you go back into the room where Mr. Brady and Mr. Sanders were?

A. Not until Mr. Brady and Mr. Sanders were finished with their conversation. I went outside and conducted the buying of my batteries from Bowers.

1607 Q. Then did you ultimately go back to the room where Mr. Sanders and Mr. Brady were?

A. After Miss Zadlick told me she had these letters typed and I signed them, then I went back in there.

Q. When you said "these letters written" did you include CX-334?

Mr. Kelaheer: Will you show that to the witness, please?

The Witness: I have two. I don't know which you are referring to."

(A document was handed to the witness.)

The Witness: Would you repeat that?

By Mr. Correa:

Q. When you said Mrs. Zadlick told you that she had these letters written—

A. Typewritten.

Q. Did you include in the expression "these letters" Commission Exhibit 334?

A. Yes, sir.



Q. You said that when she told you that, you got the letters and signed them, is that right?

A. Yes, sir.

Q. I note that CX-334 has a longhand legend written in the lower right-hand-side of it with a date, and a signature. I show you the exhibit and ask you is that—

A. That is my signature.

1608 Q. Can you tell us in whose hand that legend is written?

A. That is mine.

Q. Is that your signature?

A. Yes, sir.

Q. After you signed that and entered this notation, did you then go to the room where Mr. Sanders and Mr. Brady were?

A. Yes, sir.

Q. Did you have a conversation with them?

A. About the various—yes, sir, we did.

Q. Did you tell them of your conversation with Mr. Jones?

A. Yes, sir.

Q. Did you tell them that you had had it tapped?

Mr. Kelaher: Objection to the characterization of the testimony. That is not tapping, your Honor.

By Mr. Correa:

Q. Did you have it intercepted?

Mr. Kelaher: That is not tapping. Let's have it in the record.

Mr. Correa: According to the appeal—

Mr. Kelaher: You can argue all day and it is not tapping, and you know it. I don't want that characterization in the record.

Mr. Correa: At least—

The Witness: I do it every day. It is the secretary's job to listen in and take notes.

1609 By Mr. Correa:

Q. Did you tell Mr. Brady that the conversation had been recorded?

A. It wasn't recorded.

Q. Didn't you tell me a moment ago that you asked this lady to make notes?

A. Take notes, it is not recording on any tape.

Q. No, it was recorded on a stenographer's notebook, I presume?

A. That is right.

Q. Did you tell Mr. Brady it had been recorded in a stenographer's notebook?

A. I don't recollect if I did or didn't, to tell you the truth.

Q. Did you show Mr. Brady Exhibit 334?

A. I gave it to him. I didn't show it to him,

Q. You gave it to him?

A. Yes, sir.

Q. Did you tell him from what the typewritten part of Exhibit 334 had been prepared?

A. From what it was being—

Q. Had been prepared?

A. Yes, sir. I just said in the conversation, because Mrs. Zadlick and all was there at the time.

Q. You testified before in proceedings of this 1610 character, Mr. Witness?

A. In what respect?

Q. Have you testified before in Federal Trade Commission proceedings?

A. No, sir. Not Federal Trade.

Q. Or proceedings by other governmental administrative agencies?

A. Yes, sir.

Q. What one?

A. A DX-2, California, in Washington, D. C.

Q. What was the agency involved in that?

A. Pardon?

Q. What was the agency?

A. It was the Bureau of Standards, Postal Inspector, Chamber of Commerce.

Q. You like testifying, don't you?

A. No, sir. It takes my time up and I am losing money.  
Hearing Examiner Kolb: Is there anything further?

Mr. Correa: Just one comment, your Honor.

By Mr. Correa:

Q. One additional question.

Mr. Witness, CX-335 appears to be an invoice dated July 4, 1956. Could you tell me is the merchandise described there a battery?

A. Yes, sir.

1611 You testified that that is one of the people who wayed you off?

A. Yes, sir.

Q. At the time CX-335 refers to, was he at that time a battery customer of yours primarily, when he was a customer?

A. When he was;

I don't know if he is tomorrow, but I sell him jacks and gum-out—that is TBA.

Q. Do you sell him batteries?

A. Yes, sir.

Q. And you say in addition you sell him jacks, and what was the other item?

A. Gum-out.

Q. Anything else?

A. Anything that I try to sell him. Sun glasses. I try to sell him anything that I have to sell.

Q. You have a very diversified line, don't you?

A. I try to.

Mr. Correa: I have nothing further.

Mr. Kelaher: Your Honor, at this time I would like to offer Commission Exhibits for identification 334 through 339 into evidence.

Mr. Correa: May I see them a moment?

Mr. Kelaher: I ask that photostatic copies be substituted for the originals.

1612 Mr. Correa: May I see them? I can't keep them in mind by numbers.

If your Honor please, we have no objection except I should note with respect to 334 that while I make the objection with great reluctance because its weight is practically nil in the context of the testimony, nevertheless there is no doubt that this was obtained by illegal means and is illegal evidence, and probably should be objected to on that ground. I don't press the objection with any great vigor, however, because of the inconsequential weight of the evidence.

Hearing Examiner Kolb: The documents will be received in evidence as Commission Exhibits 334 through 339.

(The documents heretofore marked COMMISSION EXHIBITS for identification 334 through 339 were received in evidence.)

Hearing Examiner Kolb: Is that subject to a motion to strike by Atlantic?

Mr. Thompson: Yes, sir.

Hearing Examiner Kolb: Subject to a motion to strike by Atlantic?

Mr. Correa: May I note on the record that objection to this last-mentioned exhibit is made, among other grounds, on the Fourth Amendment to the Constitution of the United States, as well as the Fifth.

I guess we must object also to some of these in-  
1613 voices because they relate to sales, as I understand it,

sales of tires and batteries to Sinclair stations after January 1, 1956.

Hearing Examiner Kolb: Let's take a recess and get straightened out on the exhibits.

(A short recess was taken.)

Hearing Examiner Kolb: On the record.

The exhibits have been received in evidence. There is a question of additional objections. I think Mr. Correa said he hasn't any additional objections.

Mr. Kelaher: Before he makes the objection, I wish to state that I am offering the entire Exhibit 334 in evidence so there will be no misunderstanding. I think there was some discussion off the record.

Hearing Examiner Kolb: There is nothing on the record indicating other than that you are offering the entire exhibit.

Mr. Correa: I wish to add the general objection which goes to the exhibits to all the testimony of this witness, insofar as it relates to matters not in issue under any construction of the instant complaint, namely sales or attempts to sell tires and batteries to Sinclair stations on or after January 1, 1956.

Mr. Kelaher: I think your Honor formerly ruled on a similar objection prior to this one.

1614 Hearing Examiner Kolb: The objection is overruled. They have already been received in evidence.

Mr. Thompson: Subject to a motion to strike by Atlantic.

Hearing Examiner Kolb: That has already been taken care of.

*Redirect Examination by Mr. Kelaher.*

Q. During your cross-examination you mentioned on April 4, 1956 you made two telephone calls. We have already discussed your call to Mr. Jones. To whom was the other call made?

Mr. Correa: That is objected to as improper redirect. The witness did his best to get me to ask him about the other telephone call and I carefully refrained. I couldn't be more incurious.

Hearing Examiner Kolb: I think you brought it out in cross-examination.

Mr. Correa: With great respect, your Honor, I didn't. The witness brought it out, but I can't be charged with the unresponsiveness of the witness.

Hearing Examiner Kolb: You went step by step as to what he did during the entire time he was there. One of the things was the telephone conversations.

Mr. Correa: I respectfully object.

Hearing Examiner Kolb: Objection overruled.

1615 By Mr. Kelaher:

Q. Will you please state to whom the other call was made and the substance of the conversation?

Mr. Correa: I have a voir dire on this, if your Honor please, to preserve my record?

Hearing Examiner Kolb: We had better find out first to whom the telephone call was made. Or do you know?

Mr. Correa: No, I don't. I don't care to whom it was made. I wish to know if it was made under illegal conditions, in view of the fact that the other one was.

Mr. Kelaher: I don't think this is a proper subject for voir dire at this point.

Hearing Examiner Kolb: Let's first find out to whom the telephone call was made.



By Mr. Kelaher: /

Q. Please state to whom the telephone call was made.

A. Mr. Johnson, credit manager of the Betholine credit card department.

Q. By Betholine are you referring to Sinclair?

A. Yes, sir.

Q. And—

Hearing Examiner Kolb: Do you want your voir dire now?

Mr. Correa: Yes, sir.

Hearing Examiner Kolb: All right.

1616      *Voir Dire Examination by Mr. Correa.*

Q. Mr. Witness, I take it this telephone call to Mr. Johnson was made either just before or just after the call, the other call to Mr. Jones about which you testified?

A. Yes, sir.

Q. Was it just before or just after?

A. The time is on the letter.

Q. Was this call to Mr. Johnson also listened in by Miss Hilda Zadlick?

A. Yes, sir.

Q. It was?

A. Yes, sir.

Q. Was that done at your request?

A. Yes, sir.

Q. Was Mr. Johnson informed that this lady was on the line?

A. No, sir.

Q. Did she make a record of the conversation?

A. Pardon?

Q. Did she make a record of the conversation?

A. She took notes.

Q. Stenographic notes?

A. I don't know what kind of notes. The only note—the letter is actually what I saw. What notes she took I do not know.

1617 Q. Did she do that at your request?

A. Yes, sir.

Mr. Correa: I object, if your Honor please, on the basis of the testimony just given by the witness to any further testimony about this conversation.

Hearing Examiner Kolb: The objection will be overruled.

*Redirect Examination (Resumed).*

By Mr. Kelaher:

Q. Mr. Govoruhk, do you hold a Sinclair credit card?

1618 A. At the present time; no, sir.

Q. Did you at the time of the conversation in question hold a Sinclair credit card?

A. Yes, sir.

Q. Had you attempted to purchase TBA products from Sinclair service stations through the use of your Sinclair credit card?

A. Yes, sir.

Q. What had been your experience?

A. It was at Owens service station on Sinclair and Urban Avenue. I just drove in, got gas, and happened to have a dead battery. I wanted to buy one. They had Bowers batteries and I asked to get a Bowers battery put on my credit card.

Mr. Correa: Did we get a date?

Hearing Examiner Kolb: Let's let him finish.

Mr. Kelaher: Let him finish and I will handle the questions at this point.

Mr. Correa: As long as you do it properly, counsel. When you don't I will object. I am serving notice now.

Mr. Kelaher: I am sure you will.

The Witness: So that is the thing that happened before the telephone conversation—

By Mr. Kelaher:

Q. You didn't tell us what happened.

A. The attendant refused to give me the battery because he said all products have to be Betholine, Sinclair 1619 clair or Goodyear products to be honored by the credit card.

Q. When did this conversation or this attempted use of your Sinclair credit card take place?

A. I would say a few months, approximately, before my telephone call.

Q. Now—

Mr. Correa: If your Honor please. I must move to strike, unless the date can be fixed more accurately, because if this incident occurred after January 1, 1956 I can't see that it has any probative force or relevance to the issues in this proceeding. We are not trying a case other than the sales commission plan so far as Sinclair is concerned, and we are trying, as I understand it, the plan they had and not some plan that they had at some previous time.

Mr. Kelaher: Your Honor, this testimony refers to the use of Sinclair credit cards.

Mr. Correa: To purchase batteries.

Mr. Kelaher: To purchase Goodyear TBA. We have asked Sinclair to produce credit cards which will show that Sinclair credit cards are limited to the purchase of Goodyear TBA, and that is what this testimony goes to.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Kelaher:

Q. Now state what the substance of your conversation was to Mr. Johnson.

A. I called up Mr. Johnson and told him that I held a credit card number and gave him the credit card number at the time that he held, and told him that the occasion arose that I tried to purchase a battery from a service station and he declined to honor it because it wasn't a designated product so honored by the credit card. He went into details of stating that actually the fellow was in his bounds by refusing me, but if he did honor that product on my credit card and I in turn do not pay for the product when it is billed to me through mail, that in turn goes back to the service station and he is liable for the loss of the money.

Q. And you are referring now to the purchase of a non-Goodyear product, is that correct?

A. Yes, sir.

Mr. Kelaher: No further questions, your Honor.

Mr. Correa: I move to strike the testimony, if your Honor please. I point out to your Honor, if I may speak to this motion a moment, that we have here a matter which is of seriousness that transcends the particular small incident in connection with which it arises. Because this testimony is confined to batteries and to Sinclair and there was no sales commission plan affecting batteries and Sinclair at the time of the incident. The implications of this are if we are to have evidence in this proceeding contrary to what has been established heretofore, if precedent even in this proceeding has significance, if we are to have that kind of evidence we are going to broaden the issues out and obviously we will find ourselves in the position of trying something which not only is not but cannot conceivably arise under the pleadings in this particular case.

Hearing Examiner Kolb: I understand that the credit card situation will be developed through the Sinclair witness. I don't know what the materiality at the present time will be until that testimony is introduced. I will receive this subject to a motion to strike after the Sinclair testimony is in.

Mr. Thompson: May we note, sir, that all of the redirect is taken subject to Atlantic's objection and motion to strike?

Hearing Examiner Kolb: Yes.

Mr. Kelaher: I would like to ask the witness if he can fix the date of that—the date when he went into the Owens service station—more firmly in his mind.

Mr. Correa: That is not a proper question in view of the witness having been here through all this colloquy. I am not sure that he caught the point but he may have.

Hearing Examiner Kolb: The witness is under oath.

The Witness: The only way that I can actually fix that is going back through my records. It can be done 1622 through the records of Betholine at the time that I bought gas prior to that at that particular service station.

Mr. Kelaher: I think this witness should have an opportunity to examine his records and furnish the date, without having to recall him.

Mr. Correa: When was this telephone conversation?

Hearing Examiner Kolb: It is getting that much involved I am going to strike the entire testimony with reference to this conversation and be done with it, on the ground that the witness is unable to establish the exact time the conversation took place, and there is a question of whether or not it would be material if it occurred within certain periods.

Mr. Keller: Your Honor, he did state in his testimony—

By Dr. Kelaher:

Q. Didn't you say—

A. A couple of months prior to that.

Mr. Kelaher: I take exception to your Honor's ruling. I think it is very material, subject to being connected up with the date.

Hearing Examiner Kolb: I am not going to have this witness go out and have another hearing here for the purpose of establishing that telephone conversation.

Mr. Kelaher: No, your Honor, we are not—

1623 Hearing Examiner Kolb: I can't see that it amounts to that much under any circumstances.

Mr. Kelaher: He has established the date of the telephone conversation as April 4, 1956. The date of the conversation has been established. It is simply the time—

Hearing Examiner Kolb: Then we will let it stand, subject to a motion to strike after the Sinclair testimony is in.

Mr. Kelaher: No further questions.

Mr. Correa: No questions.

Hearing Examiner Kolb: The witness is excused.

(Witness excused.)

Mr. Kelaher: May we have a short recess?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

1624 Hearing Examiner Kolb: The hearing will be in order.



JOSEPH B. McMASTER was called as a witness for the Commission and, having been first duly sworn, testified as follows:

*Direct Examination.*

Hearing Examiner Kolb: Will you state your name for the record.

The Witness: Joseph B. McMaster.

Mr. Kelaher: Mr. Examiner, before I begin examination of this witness, I would like to ask for the exclusion of other witnesses we are calling, in accordance with Mr. Correa's motion. I understand—

Mr. Correa: There is no need to pussyfoot about it. Counsel has reference to Mr. McCauley, of the Sinclair Company, who is here and who has been subpoenaed by counsel for appearance ultimately, or I guess Friday in this proceeding. It has been subject to postponement.

The point, Mr. Examiner, is so far as Mr. McCauley in his capacity as a potential witness is concerned, of course we would have no objection to his exclusion.

However, as so often happens in trials, some of your witnesses are people who actually are working with counsel and assisting counsel in their factual preparation.

1625 That happens to be true of Mr. McCauley. I would be very much handicapped in the conduct of the case, particularly on this Sinclair aspect of it, if I have to proceed without such expert assistance as I can get. And I think this situation has occurred frequently, to my knowledge in any event, in cases in the United States District Courts, and more or less uniformly in those circumstances judges have made exception to the exclusion rule where the exclusion hit, for example, an expert or some other type of prospective witness who was also participating in the conduct of the case.

Hearing Examiner Kolb: Mr. McCauley may remain in the court room.

By Mr. Kelaher:

Q. Mr. McMaster, will you state your home address?

A. Sherwood Road, Cockeysville, Maryland.

Q. Mr. McMaster, were you at one time a Sinclair dealer?

A. Yes, sir.

Q. Would you please state what type of a dealer you were, with reference to whether or not you were a lessee?

A. I was a lessee dealer.

Q. At what location or locations did you operate service stations for Sinclair?

A. I operated a station originally at York and Woodbourne, 5316 York Road. I operated another station at 6412 York Road. That was York and Windwood station. And I was also financially interested in a station at Harford and Southern.

Q. Would you please give us the approximate dates when you operated these stations, beginning with the first one you operated?

A. The first one I operated I took over in February 1944. I believe it was the first day of February or the last day of January 1944. And I stayed there myself, personally, until about November 1950.

I left there in November 1950, still holding a lease, and went to York and Windwood in November—approximately November 1950. I was financially interested in a station at Harford and Southern. I think it was less than a year, around the 1947-48 period, in there.

Q. So at one period during the 1947-48 period you operated the station you first referred to, and had a financial interest in the station you referred to—

A. The first reference made there I operated in 1944,

which would have been York and Woodbourne. 1947 and 1948 would be Harford and Southern.

Q. And you operated the York and Woodbourne station until November 1950?

A. Yes, sir.

Q. And thereafter, did you continue as lessee of that station?

A. Yes, sir, until approximately, roughly, around 1952 about a year's time. I think it was in the early part of 1952.

Q. Did someone operate that station for you?

A. Yes, sir.

Q. What is the name of the operator?

A. Floyd Dearborn.

Q. With respect to the station in which you had a financial interest, did someone lease that station in your name?

A. No, he leased that station in his own name. He was a former employee.

Q. What was the name of the lessee of that station?

A. Elwood Gray.

Q. With respect to the 6412 York Road station, how long did you operate that station?

A. I operated that station from, as I say, approximately 1950 until November 30, 1954.

Q. Beginning in 1954, when you began operation of your 5316 York Road station, what brand of batteries did you carry?

A. Wait a minute. You said "1954". Do you mean 1944?

Q. I thought I said 1944.

A. In 1944 I took over that station from George Leidner. I do not recall what type of battery that he had there at the time, that George had. But after I had been in there a few months I started out with Bower's battery and went along with Bower's battery for a period of time.

Q. From whom did you purchase the Bower's battery?

1628 A. From Bowers battery distributing point here in Baltimore.

Q. At that time—speaking about the period when you began to purchase Bowers batteries—were you solicited to buy Goodyear TBA batteries by Goodyear Tire and Rubber Company or a salesman thereof?

A. Solicitation sort of fell off during that time, as I recall, because it was during the war, and Goodyear at that time couldn't supply us with our necessary requirements. That was my reason for going with Bowers.

Q. How long did you continue to purchase Bowers batteries?

A. I purchased Bowers batteries up to and including probably around 1947-48.

Q. Were you a substantial purchaser of Bowers batteries?

A. Oh, yes.

Q. What happened in the latter part of 1947 or 1948?

A. In around 1947 Mr. McCauley sent me a letter to come down to the Sherwood office, Sherwood Sinclair office. So I thought, I wonder what this is for. So I went down. It wasn't lease-cancellation time.

So I went down and, as I recall, I know Mr. McCauley was there because he was the one that handled it, and I think Mr. Weller was there, and I believe Karl Cottman.

We went into a conference room, some sort of conference room that had quite a large table. They put me on one side of the table and the other three down the other side.

1629 So, to make the conversation short, Mr. McCauley was in a hurry and he said, "We will make this brief, Mac. You are not buying batteries from us."

I said, "No, Mac, I can't buy batteries from you. I owe an allegiance to Bowers because they took care of me dur-

ing the war and immediately after the war, and I promised them if they would help me so I could remain in business satisfactorily, that I would see that they maintained and kept the business."

And his almost exact words were, "We don't give a good God damn who you think you owe, you are going to buy our batteries or else."

And that was the end of the meeting.

Q. By "our batteries," what batteries was he referring to?

A. Goodyear.

Mr. Thompson: It is of course understood, sir, that this testimony is taken subject to Atlantic's objection and eventual motion to strike?

Hearing Examiner Kolb: That is right.

By Mr. Kelaher:

Q. Thereafter, did you continue to buy Bowers batteries?

A. No, not for very long, because I knew what the "or else" meant.

Q. What did it mean to you?

A. It meant cancellation of my lease the next time 1930 it came up for renewal.

Q. Then what batteries did you purchase thereafter?

A. Goodyear batteries.

Q. How long did you continue to purchase Goodyear batteries?

A. I purchased Goodyear batteries from then on clear up to the time of final cancellation.

Q. At your various stations?

A. Yes, sir.

Q. Beginning in 1954, when you first commenced station operation as a Sinclair Service lessee, what brand of batteries did you purchase?

A. Will you repeat that?

Q. Beginning in 1954, what brand of tires did you carry in your respective stations?

A. Goodyear.

Q. Beginning in 1944.

A. In 1944, Goodyear tires.

Q. Then did you continue to buy—from whom did you purchase Goodyear tires?

A. Originally, if my memory serves me correctly, I purchased Goodyear tires mainly through the Goodyear store, I believe in 1944.

As a matter of fact, there is a friend of mine here in the room, Mr. Smith, who used to call on me, I think from Goodyear, during those first two years, I believe.

1631 Q. Then thereafter, from whom did you purchase Goodyear tires?

A. Brooks-Huff Goodyear came into the picture and we started to order our merchandise through them.

Q. Will you describe your tire purchases from 1946 up until 1954? Describe your source of supply.

A. The main source of supply during those years, right up to the latter part of 1952 or 1953, was Brooks-Huff, with the possible exception of a few instances where customers demanded certain other types of tires, other brands, and we secured those for them.

In 1952-53 Cronin Sons, distributor of Goodrich and Kelly, came into the picture, and Ezrine Tire Company. The reason I was primarily interested in Ezrine Tire Company is because they handled Goodyear merchandise at a better price, which gave me the opportunity of displaying Goodyear merchandise, figuring maybe that the Sinclair organization wouldn't catch on to the fact that I wasn't buying them through Brooks-Huff Goodyear.

Q. Approximately how much of a better price were you able to obtain from Ezrine Tire Company on your Goodyear tires?



A. I would safely say between ten and fifteen percent.

Q. To go back a second, how did your profit margin on Bowers batteries compare with your profit margin on Goodyear batteries?

1632 A. It was much better.

Q. Much better on which one?

A. On Bowers.

Q. Getting back to the tire situation, you stated that in 1952 or 1953 you began to purchase from other suppliers of tires. What tires did you purchase from the Cronin Tire Company?

A. I purchased some Goodrich from Cronin; mainly Goodrich from Cronin at that time.

Q. Were these also purchased at a lower price than you were then paying for Goodyear tires from Brooks-Huff?

A. Yes, sir.

Q. Were you solicited for Goodyear tire business by Sinclair representatives at or about this time?

Mr. Correa: May I inquire what time?

Mr. Kelaher: 1952-53.

The Witness: Would you repeat that?

By Mr. Kelaher:

Q. Were you solicited to buy Goodyear tires by either Brooks-Huff or by Sinclair representatives at or about that time?

A. Brooks-Huff Goodyear had a salesman who called on a regular day of the week, each and every week, and then you had the representatives from Sinclair dropping in continuously throughout the week.

Q. Was any comment ever made about your purchases of tires?

1633 A. Yes, sir. I remember one case in particular.

Bob Vaughn, who was a salesman for Brooks-Huff Goodyear came into the office and they found out that I was buying from Ezrine Tire Company.

Bob came in and asked me where I had purchased these tires, because I hadn't been purchasing from Brooks-Huff Goodyear and he knew that something was wrong.

And I said, "Bob, I am buying them from Ezrine." I said, "They have a much better price."

He said, "We can't figure out where he is getting these tires."

I said, "I imagine he is getting them from Goodyear."

He said, "No, we mean his source of supply."

So he took a pad and pencil and he would take the tires one by one, that I had just gotten in—as a matter of fact, this day that he came in I had a pile on the floor, and he started one by one. He took the serial numbers off of each tire right down the line, and he said, "We will send this back and this way we can check as to where he is securing this merchandise."

Q. Were the tires he checked purchased by you from Ezrine Tire Company?

A. Yes, sir.

Q. They were Goodyear tires?

A. Yes, sir.

1634 Q. Did any representatives of Sinclair speak to you about your purchases of tires from other than Brooks-Huff Tire Company?

A. Usually Sinclair representatives, when they would come into your station, they didn't talk particularly in one vein. They talked Brooks-Huff Goodyear. It was a TBA, definitely a TBA setup.

When they talked it was a general-purchase situation. I mean they wouldn't say specifically one thing other than the fact if one thing wasn't handled it evidently was reported to the office and then you were handled down there like Mr. McCauley did to me that time.

Q. Where would these conversations with Sinclair representatives take place?

A. They all had different techniques. The salesmen were changed back and forth. You never knew when it was going to happen.

For instance, they had one salesman who worked for them—I don't know if he still does—named Elmore Evans. Elmore was one of the original salesmen that came to call upon me at Woodbourne Avenue.

Elmore would come in there and say, "Mac, come here, I want to see you in the back room a minute."

You would go in and you knew what he meant when he said "the back room." He would say, "Mac, we were 1635 checking over the inventories and so forth, and you are not purchasing so and so," or "I see something out front there. You know you owe this business to the company." And they would lay the law down to you, real good.

Mr. Correa: If the witness has finished his answer, I have a motion.

I move to strike the answer on the ground that it is completely unresponsive to the question, which was, "Where would these conversations take place?"

I ask that the witness be instructed to answer the questions responsively, henceforth.

Hearing Examiner Kolb: I will let the answer stand. Answer the question as best you can.

By Mr. Kelaher:

Q. Mr. McMaster, do you recall the names of any other Sinclair representatives who called on you, in addition to Mr. Elmore Evans?

A. Well, Elmore Evans, Gus Wrede, Dave Stanbaugh, and I can't remember the one man's name, he only called on me a short time. They called him "Doc." I can't remember his last name.

Q. Did you ever have any conversations with these

Sinclair representatives concerning your purchases of tires from other than Brooks-Huff? If so, state where and the substance of the conversations.

1636 A. Shall I go into that Elmore Evans again?

Q. No. I think that answer stood.

Hearing Examiner Kolb: This might be a good time to break for lunch.

We will recess until 2:00 o'clock.

(Thereupon, at 12:33 p. m., the hearing was recessed, to reconvene at 2:00 p. m., this day.)

1637

Afternoon Session.

(2:00 p. m.)

Hearing Examiner Kolb: The hearing will be in order.

JOSEPH B. McMASTER resumed the stand and, having been previously duly sworn, testified further as follows:

*Direct Examination (resumed).*

Hearing Examiner Kolb: As to the subpoena duces tecum served upon officers of the Sinclair Refining Company, returnable November 22, 1957—the subpoena was served November 15th—counsel have agreed that an extension of time of 25 days from November 15th will be allowed for the purpose of determining whether or not compliance with the subpoena can be made, the terms modified, or motion to quash filed.

As to the witness Fred McCauley, who was also subpoenaed to appear on November 22nd, he will be excused until the return date of the subpoena, which will be determined after counsel has determined what is to be done and the date set by the hearing examiner.

You may proceed, Mr. Kelaher.

Read the last question.

(The reporter read the question.)

1638 By Mr. Kelaher:

Q. You may continue with your answer to that question.

A. As they would change the representatives in the territories, as I said previously, each one had a different technique of operation.

Q. You are speaking of Sinclair representatives?

A. Yes, sir.

Mr. Correa: If your Honor please, I dislike to interrupt the witness' answer, because your Honor has admonished me as to that. On the other hand, when I failed to interrupt this morning a long unresponsive answer, your Honor let the answer stand although telling the witness to answer responsively.

The question now is, did you ever have conversations with these Sinclair representatives?

The Witness: Yes, I did.

1640 By Mr. Kelaher:

Q. Mr. McMaster, in your answer just give the approximate time of the conversation and the substance of the conversation.

A. There would be many times. It wouldn't be just one time. It would be many of them. I mean that is a repeated thing, as a constant application, regardless of what salesman or representative it was, when he would come into the office, if anything foreign was noticed in your inventory, a comment was made concerning it, "Where did you purchase it?"

Mr. Correa: With the deepest regret, because I would like to see these proceedings get on, and this witness is certainly intelligent enough to understand what is called

for, we can not have these speeches, I submit. Particularly not from an interested party to litigation involving at least one of the respondents.

Hearing Examiner Kolb: Objection overruled. Let's proceed.

The Witness: Mr. Wrede, for instance, would do it on the basis of not taking you into a back room but by taking you out to lunch or something like that, and asking you if you wouldn't kindly buy from Brooks-Huff Goodyear in such a nice way that you felt like you might be inclined to do so.

Others would do it in different manners. For instance, as I stated before, in Elmore Evan's case.

1641 Dave Stanbaugh, when he would come into the station, Dave would stand around and shoot the breeze, talk about generalities. He eventually would get around to the subject of TBA and why you weren't buying. You would say to him, "Well, Dave, if you could only get the company to give me a better price on these things, I could buy."

And Dave would say, "Well, Mac, there are things that you want and I am sure if you would go along with the company they would go along with you."

I would say, "Dave, I don't know what I want in particular except to do more business, and I can only do it with a fair price."

And he would say, "That is beyond my power. You will have to take that up with the others."

1642 By Mr. Kelaher:

Q. Mr. McMaster, during the period when you first began Sinclair station operation in 1944 and continuing on through your various stations, from whom did you purchase your accessories?



A. I purchased some from Brooks-Huff Goodyear when they came into the picture. I purchased from R. W. Norris, R. J. Loock, J. R. Hunt, and F&L Auto Supply.

Q. Beginning about 1951, did your purchases of Goodyear TBA from Brooks-Huff increase, decrease, or remain the same from then until you left the station in 1954?

Mr. Correa: The form of the question is objected to. Let counsel ask what the fact is and get into generalities only if we find the witness unable to give us the exact fact.

Hearing Examiner Kolb: Objection overruled.

By Mr. Kelaher:

Q. Go ahead.

A. In 1951, I would say the latter part of 1951, my purchases from Brooks-Huff Goodyear in the TBA line materially started on a decline, mainly because of tires and other TBA items exclusive of batteries, primarily because Ezrine and Cronin Tire Companies could offer me a better price.

It wasn't because I objected to Brooks-Huff Goodyear, it was because I wanted a better price to be competitive.

That is what I wanted.

1643 Mr. Correa: I move to strike all of the answer except the part responsive to the question which was that his purchases began to decline.

Hearing Examiner Kolb: Motion denied.

Mr. Correa: It is unresponsive.

By Mr. Kelaher:

Q. You stated that at one time you purchased Bower batteries. For how long a period did you purchase Bower batteries. Do you recall?

A. In the main, from about 1945 to about 1948.

Q. Did your purchase of Bowers batteries decline after your conference with Mr. McCauley and others?

A. It sure did.

Q. Did you receive a cancellation notice from Sinclair at any time?

A. Yes, sir. I received a cancellation notice from Sinclair in November, I think it was November 1, 1954.

Q. When was that effective?

Mr. Correa: I object to the question. The document is the best evidence. It speaks for itself.

Hearing Examiner Kolb: Do you have the cancellation notice?

Mr. Kelaher: I don't seem to have it.

Mr. Correa: I have it, or at least a photostatic copy that I would be glad to tender to counsel.

1644 Mr. Kelaher: It would be appreciated because I have asked Sinclair to furnish that.

Mr. Correa: You are referring to the adjourned subpoena?

Mr. Kelaher: That's right.

Mr. Correa: Probably you don't have it because of the adjournment.

Mr. Kelaher: I would first like to have this marked for identification.

(Whereupon, the document referred to was marked Commission's Exhibit 340 for identification.)

1645 By Mr. Kelaher:

Q. Will you please state what Commission Exhibit 340 for identification is?

A. This is—although I don't have my letter any more—this sounds very much like the one I received.

Mr. Correa: May I state on the record counsel that I suggest that we have this stand as the exhibit until you get your production under your subpoena, and then substitute the Sinclair copy.

Mr. Kelaher: That is agreeable.

Mr. Kelaher: I offer Commission Exhibit 340 into evidence.

Mr. Correa: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 340, subject to a motion to strike by Atlantic.

(Whereupon, the document, heretofore marked COMMISSION EXHIBIT 340 for identification, was received in evidence.)

By Mr. Kelaher:

Q. After you read your notice of cancellation identified as Commission Exhibit 340, did you discuss the matter with officials of Sinclair Refining Company?

A. Yes, sir; two of them, in fact.

Q. Please state the officials you talked to, and the substance of the conversation.

1646 Mr. Correa: And the date also?

By Mr. Kelaher:

Q. And the approximate date of the conversation.

A. First, I talked to Mr. Weller—Harry Weller—and that was within one day of receiving the cancellation. When I called him on the telephone, I asked him what the reason for the cancellation was. And he said, "Well, we feel like we can get a better operator."

I said, "How do you mean you can get a better operator?"

He said, "Mac, let's put it this way: we feel like we can get a better operation out there."

Q. Was that the extent of the conversation with Mr. Weller?

A. Yes, sir, it was very short.

Q. Thereafter, did you have a conversation with another Sinclair official?

A. Yes, sir: I called Mr. John R. Sherwood, and I

asked him that rumors had reached my ears that he was stating to my customers who were protesting this cancellation that I was uncooperative. I said, "On what grounds do you say that I am uncooperative?"

He said, "Well, Mac, let me cite to you what I mean."

He said, "You have a large sign on top of the building, a Sinclair sign, which you will not turn on at night when it gets dark."

I said, "Mr. Sherwood, I can't turn that sign on, 1647 or off, manually, because your men, servicemen, have put in time clocks, and since the installation of the sign, they have had two time clocks in there and neither one of those time clocks have operated efficiently. And they have asked me to leave everything alone, that they will get the proper time piece in there to operate the sign."

He said, "Mac, I didn't know that."

I said, "There are a lot of things you don't know, Mr. Sherwood that you ought to find out. Why don't you ask these men who told you that story?"

He said, "If I ask them, they will only tell me the same thing again."

I said, "Then, you are a pretty poor boss if you can't get the truth."

And that ended that conversation.

Q. Thereafter, did any other Sinclair representative talk to you concerning the matter?

A. Well, there was one other Sinclair representative, Bobby Neilson, came out to the station. He came out to the station approximately a week before I was to leave the station. And he said to me, "Mac, you are not going to give up your income and leave the station, are you?"

I said, "Yes, that is what I am going to do."

He said, "Why don't you go down and talk to them and tell them you will be a good boy?"

1648 He said, "I am sure if you will go down and talk to them and tell them that you will do the right thing that they will let you keep the station."

I said, "No, Bobby, I am not going to go down. I haven't done anything wrong and I don't intend to go down and discuss it with them."

Q. At the first Sinclair service station that you operated, did your monthly gallonage increase, decrease or remain the same during your operation of that station?

A. From 1944, when I took that station from George Leidner, if memory serves me right, it was approximately 12,000 gallons. If you will check the records, you will find that is about right. And up until 1950, in November, when I left that station, we were doing between 28 and 30 thousand gallons.

Q. That is monthly?

A. Yes, sir.

Q. Then, at your last Sinclair station, did your gallonage increase, decrease, or remain the same during your operation?

1649 A. It increased up until, I think, around 1953—between 1953 and '54, and I think it remained about the same. There may possibly have been a little increase in 1954 over 1953.

Q. Was there an opportunity for the gallonage increasing by the time you left?

A. Oh, yes. The station that I left there, they were very close to opening that Stewart Shopping Center which was next to the station, which I had looked forward to, because I had felt that that would definitely step up the gallonage. And the Food Fair on the other side of the station, was just starting in the process of being built.

1650 Q. Do you know of your own knowledge the names of any other Sinclair dealers who received cancellation notices on or about the same time you did?

A. Mike Tawney, out in Towson, who is the next station beyond mine.

Q. What was the location of his station?

A. He was in Towson proper, there, at the bottom of the hill. Mike went out the same day as I did. As a matter of fact, Sinclair had two crews on the change over of inventory in both stations at the same time. That is how I recall it.

Q. Did you discuss the matter with Mr. Tawney?

A. I went out to Mike shortly after I received my cancellation—

Mr. Correa: I object to anything but a Yes or No answer to the question.

The Witness: Yes, I discussed it with him.

1651 Q. When you handled Bowers batteries in your station, did you advertise much?

A. No, sir.

Q. What was your reason for not advertising such batteries?

A. Well, to advertise them or to put a sign out and write "special" on it or something, which you could do with that price range, was only to ask for trouble.

Q. What window valance and what outdoor signs were in your various stations?

A. Sherwood Sinclair took care of all of that. We bought a curb sign from them originally, when we went into the station. I think it cost \$15.00. Then, maybe they would bring you out posters and so forth to put into those, advertising tires, or batteries, or different types of merchandise, gasoline,—in other words, if they would come



out with something in the gasoline field, they would put that in there.

Q. What brand of TBA products were advertised?

A. Goodyear.

1652 Q. Did you honor Sinclair credit cards at your service station?

A. Yes, sir.

Q. What TBA products were honored on such credit cards?

A. Goodyear.

Q. And did you at any time attempt to honor sales of any other brand of TBA merchandise?

A. Yes, sir, a couple of times.

Q. Was anything ever said about that by Sinclair?

A. It was rejected quite a few times. They sent it back and I had to pay cash.

Q. Did you ever have any discussions or conversations with Sinclair personnel concerning the matter?

A. I called in one time about—

Mr. Correa: Could a date be fixed?

1653 Mr. Kelaher: That is what he is giving right now, I think.

Mr. Correa: One time, is all I have.

Mr. Kelaher: He said "about".

By Mr. Kelaher:

Q. Go ahead.

A. I called him when I was at Woodbourne Avenue, about 1947. I had received back a credit card—not a credit card but a C. I. D. that I had turned in, and they sent it back to me and asked whether it was Goodyear merchandise on there? And it wasn't at that time because it was a special for one particular customer. They told me that it couldn't be honored because it wasn't Goodyear merchandise; that I had bought it elsewhere.

Q. Do you recall which merchandise it was?

A. It was tires, sir.

Q. Do you recall the brand?

A. I think it was O'Toole's General Tire Company.

Q. It was not a Goodyear tire?

A. No sir; no, sir.

Q. Did Sinclair representatives ever take orders for Goodyear TBA?

A. Yes, a few times. They would come in. For instance, if you had a special order—once in a while you would get an odd-sized tire or something odd in a battery. One of the Sinclair representatives would come 1654 in and you would say to him, for instance, "Bobby, how about calling up on the phone and getting this merchandise for me?"

They would call. Or if it wasn't an immediate order you could give it to them, they would take and write it down and call it in themselves.

Q. With whom would the order be placed?

A. Brooks-Huff.

Q. Did you request the order to be placed with Brooks-Huff?

A. Not all the time, sir. In some instances you would—for instance, ask for a special type battery. You wouldn't necessarily mean Brooks-Huff but when you gave it to a Sinclair representative, it was going to be Brooks-Huff.

Q. Were you ever advised by Sinclair representatives as to where your Goodyear TBA should be purchased?

A. Well, I stated before, that has happened for the whole time I have been in the service station business.

Q. Did they name the supply point?

A. That would be all the time. I mean, when they would come in, that you were to buy from Brooks-Huff Tire Company.

Mr. Kelaher: No further questions.

*Cross-Examination by Mr. Thompson.*

Q. May I make the usual objection?

Hearing Examiner Kolb: The testimony will be received, subject to a motion to strike by Atlantic.

By Mr. Correa:

1655 Q. Mr. McMaster, you have talked throughout your testimony about Sinclair officials and your dealing with Sinclair. And I put it to you, sir, the fact is that your lease was with a corporation known as Sherwood Brothers, Inc., is that not correct?

A. I wouldn't say that was correct, sir, because I don't know the innerworkings of this company.

Q. Let's not worry about the innerworkings. How about the outerworkings, at least the ones that you were familiar with, that is, your lease. Is that your lease with Sherwood Brothers, Inc.?

Mr. Kelaher: Objection. The lease will speak for itself. They have a copy of it and it will be produced in answer to the subpoena.

By Mr. Correa:

Q. I call upon the witness to produce his lease. Do you have it?

A. No, sir.

Q. Do you recall it was with Sherwood Brothers, Inc.?

A. No, sir, I do not.

Q. I show you what may be what I understand to be—and I can not authenticate this but perhaps you can recognize it—a copy of a service station lease between Sherwood Brothers, Inc., and Joseph B. McMaster, dated the fifth day of December, 1950, and bearing a stamp on it, "Cancelled, 11/3/54," and having two annexations, 1656 or two pages, apparently, annexed to it, each of them—one marked "Exhibit A" and the other marked "Exhibit A continued."

I ask you, sir, is that a copy of your lease?

A. It is a photostat or one of those processes, a copy.

Mr. Kelaher: I think the record should show that he has three unconnected pieces of paper. There is no indication that they even belong together.

Mr. Correa: I am informed they do. But I am relying on the witness to straighten us out on it because I cannot authenticate them.

The Witness: This, sir, I wouldn't know. I don't see any place where I have signed it there. But, this is my signature, sir, and this is my signature here.

By Mr. Correa:

Q. Referring to the two pages marked respectively Exhibit A and Exhibit A continued?

A. Yes, sir.

Q. Do those papers I have shown you refresh your recollection in any way as to what your actual lease read in the respective mentioned, that is, was it not a lease with Sherwood Brothers, Inc.?

Mr. Kelaher: Your Honor, I have an objection to this type of interrogation because the lease is the best evidence and the lease can speak for itself.

1657 Mr. Correa: I submit, if your Honor please, that it is cross-examination. I am constantly learning in this proceeding, unless it is a legal innovation to me, that the best evidence rule is binding on cross-examination, counsel.

Mr. Kelaher: Most of the innovations seem to be of your own making.

Mr. Correa: Unfortunately that is not true, sir. I wish they were.

Hearing Examiner Kolb: I think, instead of characterizing that, you might address your remarks to the Examiner and let him dispose of them. Objection overruled. He hasn't identified this yet.

By Mr. Correa:

Q. Does it refresh your recollection?

A. The only thing I can say, that is my signature here and here. I have nothing that I see here as far as dates is concerned.

I don't see anything as far as dates are concerned on here.

I signed a lease at York and Woodbourne. I also signed a lease at York and Windwood. I can't say that this is the one because I haven't signed it. For this equipment, here, and so forth, this is my signature, that is correct. But for what station or what is it for?

Q. I suggest you have a look at the papers and see, after looking at them, if you find your recollection refreshed on that point.

1658 A. This one, here, sir, would be for Windwood.

Mr. Kelaher: I wonder if we could have these numbered. There are three unconnected pieces of paper. I don't know which one he is referring to.

The Witness: This is Exhibit A.

By Mr. Correa:

Q. Was Windwood your last station?

A. Yes, sir.

Q. 6412 York Road?

A. Yes, sir.

Mr. Correa: May I have the ones the witness referred to last, marked for identification, in response to counsel's very proper request.

Hearing Examiner Kolb: Do you want that marked as a Commission Exhibit?

Mr. Kelaher: No, your Honor. I am subpoenaing the lease.

Mr. Correa: I thought you asked to have it marked for identification.

Mr. Kelaheer: Yes, as respondent's exhibit.

Mr. Correa: I don't care. I am not a technician. Anybody's exhibit you like.

Mr. Kelaheer: I am not, either.

Mr. Correa: Then, I guess it gets marked for identification.

1659 Mr. Kelaheer: That's right, as Respondent's Exhibit something or other.

Hearing Examiner Kolb: That will be marked as Respondent's Exhibit G-2.

(Whereupon, the document referred to was marked Respondent's Exhibit G-2 for identification.)

Mr. Correa: While we are at it, we might as well mark the other two.

Hearing Examiner Kolb: Do all three belong together?

Mr. Correa: Yes, they belong together. The witness has not connected them.

The Witness: This one here would be for Windwood too, sir.

Mr. Correa: Then, why not mark them G-2, -3 and -4.

Hearing Examiner Kolb: Very well.

(Whereupon, the documents referred to were marked Respondent's Exhibit G-3 and G-4 for identification.)

The Witness: This one, I don't see a signature here or anything else.

By Mr. Correa:

Q. I believe your notice of cancellation was marked in evidence, was it not, on your direct examination, or a copy of it?

Mr. Kelaheer: Yes, the notice of cancellation.

By Mr. Correa:

1660 Q. And that is Exhibit 340. May I draw your attention to that, Mr. Witness, and ask you does that refresh your recollection—drawing your attention



specifically to the fact that that is signed "Sherwood Brothers, Inc." and ask you if that refreshes your recollection as to whether or not your lease in 1954, and indeed all prior leases, were in truth and in fact were Sherwood Brothers, Inc.?

A. No, sir, I will not agree to that. I say very well it could be that the lease of 1944 was with Sherwood Brothers.

But I do recall very vividly the many instances in which Sinclair was interjected into this thing, constantly. Approximately, in the 19—

Q. Mr. Witness, you are addressing yourself to your lease?

A. Yes. I would say that it is possible that the lease for York and Woodbourne could have been with Sherwood Brothers, Inc.

Q. That was your last station?

A. No, sir.

Q. That is your first station?

A. Yes, sir.

Q. And now your notice of cancellation was with respect to your last station, was it not?

A. Yes, sir.

Q. What is the date of that? You have the exhibit. I don't have a copy.

1661 A. It is October 22, 1954.

Q. By whom is that signed, sir?

A. John R. Sherwood.

Q. Is there a corporate signature above that?

A. Yes, sir. Sherwood Brothers, Inc.

Q. Does that refresh your recollection that at the time that notice of cancellation was served, your lessor was Sherwood Brothers, Inc., who notified you of the cancellation of your lease?

A. Well, this looks similar to it, but it is still, as

far as I am concerned—I haven't signed this—and as I say I knew Sinclair was in the picture. I wouldn't want to make a statement definitely that I knew it was with Sherwood or it was with Sinclair.

Q. You just don't know?

A. I don't know.

Q. Is that your answer?

A. That's right, sir.

Mr. Correa: If your Honor please, I would like at this moment to raise the point that upon all of the documentary and other evidence, but chiefly upon the documentary evidence in the record to this moment, I am going to move, and I will be guided, of course, by your Honor's wishes as to when your Honor would like to hear argument on such motion; I don't suggest we do it at 1662 this particular point but I think it ought to flag the point so that nobody can later come along and say I should have raised it earlier in light of this testimony—I am going to move to strike from this record all evidence relating to dealings between the respondent Good-year and the corporation known as Sherwood Brothers, Inc., on the ground that the sales commission plan, agreements and everything else related thereto, pertaining to Sherwood Brothers, Inc., antedated not only the complaint herein—antedated the complaint herein and ceased to exist before the filing of the complaint herein, and that under any fair interpretation of the complaint, even giving it the broad and in my humble opinion an erroneous interpretation given by the Commission with respect to its issue of other oil companies, it would still not be applicable to an oil company with whom he had ceased, for whatever reason in this case—this corporate disappearance—had ceased to do business prior to the issuance of the complaint.

Hearing Examiner Kolb: Is it your position that Sinclair ceased to do business in Baltimore?

Mr. Correa: No, if your Honor please, Sinclair is a separate entity with whom we had contemporaneously, according to my understanding with our contract with Sherwood Brothers, Inc., contractual arrangements respecting the sale of TBA.

So far as the Sinclair contract—this is all I may 1663 say to your Honor in the record in documents which long antedate the testimony of this witness. But you see, the point is raised most pointedly and most clearly by this witness because this witness actually can testify only concerning the Sherwood, Inc.-Goodyear arrangements. He was no party to the Sinclair-Goodyear arrangements.

Hearing Examiner Kolb: You tell me that Sherwood has a TBA contractor in this locality. I assume Sinclair would have the oil end and take care of it themselves. Yet, your contract which you are attempting to identify now is a contract for the sale of oil as well as TBA, isn't it?

Mr. Correa: No, if your Honor please. The contract with which we are concerned and about which I know—as a representative of Goodyear, I know—deals only with the sale of TBA. And it was the separate contract with Sherwood, Inc., which ended with the corporate existence of that corporation.

Hearing Examiner Kolb: Isn't that a gas station lease?

Mr. Correa: The witness has that. Unfortunately in the photostating, the pagination got mixed up so the witness and counsel are quite correctly able to say that it is not clear that the pages are consecutive. But this we will straighten out as soon as we get the original lease.

The lease is with Sherwood Brothers, Inc. In this con-

nection I think it might be helpful to, your Honor, to 1664 refer your Honor—

Hearing Examiner Kolb: This is a lease to operate a filling station.

Mr. Correa: That's right.

Hearing Examiner Kolb: This is a new lease not with Sinclair, apparently, but with Sherwood Brothers.

Mr. Correa: That's right, Sherwood Brothers, Inc.

Hearing Examiner Kolb: Therefore, is Sinclair selling gasoline in this section other than through Sherwood?

Mr. Correa: Sherwood Brothers, Inc., I assume—and I am speaking, I must disclaim on the record, without knowledge of the detailed arrangements because I don't know what they were—I assume they were a distributor and a subsidiary of Sinclair and distributed Sinclair's products.

Hearing Examiner Kolb: I suggest we let the motion to strike stand until such time as we find out what Sherwood Brothers is on the record.

Mr. Correa: That is all right. As I stated earlier, I wanted to raise the point at this time because it seemed to me that the testimony of this witness, being what it was, made it incumbent upon me to at least call attention to the point. I am perfectly content to reserve argument of it until some later appropriate time, and I think possibly after we have the Sherwood proof in that situation may be clearer than it is now. But I felt it incumbent upon me to raise it.

1665 May we have a few moments recess?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

By Mr. Correa:

Q. Mr. Witness, you have testified in this proceeding on behalf of the counsel supporting the complaint and I suppose it is fair to bring out that it is the fact, isn't it, that you got, according to your own understanding, a \$600,000 stake in the result of this proceeding?.

Mr. Kelaher: Objection, your Honor, if this subject is being gone into. Apparently, he has reference to a suit filed by Mr. McMaster and it has no part in this proceeding. I had no intention to engage in a debate about any lawsuit which any witness has entered. I see no point in developing that line of testimony except to show that the witness has a suit and the nature of the suit.

Hearing Examiner Kolb: That is all the question asks for, I think. The objection will be overruled.

The Witness: Would you repeat the question.

(Question read.)

The Witness: I would say so, sir.

Mr. Kelaher: I object to the form of the question and move that the answer be stricken.

Hearing Examiner Kolb: I think the question asking the witness whether it is fair or not is objectionable. I will sustain the objection and strike the answer.

Mr. Correa: I submit—

Hearing Examiner Kolb: If you want to ask him whether or not he has a suit pending, that is one thing. If you ask him whether or not it is fair is another thing.

Mr. Correa: May I have the question read?

(Question read.)

Hearing Examiner Kolb: You asked whether it was fair to bring that out. If you wish to ask another, go ahead.

By Mr. Correa:

Q. It is your understanding, is it not, that you have a \$600,000 stake in the outcome of this proceeding?

Mr. Kelaher: Objection.

Hearing Examiner Kolb: The objection will be sustained.

Mr. Correa: If that isn't interest, I submit, your Honor, I don't know what is.

Hearing Examiner Kolb: You can ask him if he has a suit pending for the purpose of showing bias. You can do that if you want to.

I have ruled on the objection. You can ask him what you want to now.

Mr. Correa: May I be heard on these objections? I was not heard on this last.

1667 Hearing Examiner Kolb: I have ruled on it now. Go ahead.

By Mr. Correa:

Q. Is it your understanding, sir—and I am inquiring as to your state of mind, you understand—that you stand to win \$600,000 if counsel supporting the complaint are successful in this proceeding?

Mr. Kelaher: Objection, your Honor. I would like to make this statement.

I greatly resent any implications going to the purpose of this proceeding. The Federal Trade Commission is only interested in the public interest. What we will obtain in this proceeding is, we hope—and it looks very much like there will be—an order to cease and desist.

Mr. Thompson: I move that statement be stricken.

Mr. Kelaher: Whether or not there are any public suits is not the concern of the Federal Trade Commission.

Mr. Correa: If your Honor please, with great respect for my learned friend's sincerity—and I am second to no



man in my believe in that—and his impassioned apologia for the Commission which he serves so ably, I do feel that the question is a proper questions and that counsel has been over sensitive to see in the question what I submit with great respect the question is not reasonably susceptible of, some animadversion upon the distinguished Commission he represents. All I am interested in probing at 1668 this moment is whether this witness has an interest in the outcome of this lawsuit. If this were a \$25,000 accident case, I would be entitled to prove that. And I can't for the moment believe that in a case involving issues of the magnitude of those involved here, and the importance and ultimate financial impact which these issues and their determination will have, I am not entitled to show that.

Hearing Examiner Kolb: Is it your position that the determination by the Commission will govern your lawsuit, the other lawsuit?

Mr. Correa: No, your Honor, my position, as my question tried to state clearly, is that I am probing whether the witness so understands. Because, after all, this whole subject of interest is a question of what the witness thinks, primarily; what mental conditioning he brings to the stand when he testifies. And I want to show, indeed I believe the witness has already answered, although your Honor has seen fit to strike the answer, that this witness understands that the success in this particular proceeding by the attorney supporting the complaint will enhance at least his chances of getting \$600,000. And that seems to me such an elemental and basic form of interest that I am entitled to have it on the record. It is for the trier of the facts to evaluate what significance it has ultimately.

1669 Hearing Examiner Kolb: Read the question.

(Question read.)

Hearing Examiner Kolb: I will overrule the objection. The witness may answer.

Mr. Burch: May I make a statement? It is only appropriate, as his personal attorney to whom Mr. Correa referred, that I be afforded the opportunity of stating his position as his counsel. The form of the question we have no objection to, and there can be no objection to asking a question of the witness as to whether he has a \$600,000 suit pending which involves the facts testified to. But for him to put a question to the witness which asks him whether or not he stands to gain on the outcome of this proceeding is completely foreign to his litigation.

The litigation is separate and distinct. The proceedings here will have nothing whatever to do with the outcome of that litigation. It is not the same as a Clayton Act violation under Sherman Anti-trust where you have a conviction and a right of bringing in the conviction as prima facie evidence. The testimony here today will have no relation whatsoever to his private litigation, and I think it is highly unfair for Mr. Correa to give a loaded question to the witness in that respect.

If he wishes to ask the witness a question as to whether he has a \$600,000 suit pending, I think that would be appropriate and I have no objection to the witness answering such a question. But not as to whether he will gain by it if some outcome results from these proceedings. And I think if he would reframe his question, we would have no objection, and I ask your Honor if you would see that the question is reframed.

Mr. Correa: May I ask, if your Honor please, that this gentleman who last spoke and who speaks so freely of loaded questions and unfairness to the witness, would give us his name for the record?

Mr. Burch: My name, which the stenographer has, is Francis Burch, attorney for Mr. McMaster in the pending

suit in the United States District Court for the Federal District of Maryland.

Mr. Correa: In view of all the colloquy, if your Honor please, I will withdraw the question and tackle the subject another way. But I think by now any useful purpose I might have served in terms of—any useful purpose has long since gone by the board. The question is withdrawn.

By Mr. Correa:

Q. Now, sir, it is a fact that you are suing the Goodyear Tire and Rubber Company, is it not?

Mr. Kelaher: Objection.

Hearing Examiner Kolb: Overruled.

The Witness: I believe so, sir.

1671 By Mr. Correa:

Q. You are also suing the Sinclair Company?

A. Yes, sir; I believe so.

Q. The Sinclair Refining Company, I believe, is the proper name.

And you are also suing the Brooks-Huff Tire Company, are you not?

A. Right, sir.

Q. And you are suing them for \$600,000, or is it \$1,800,000?

A. Well, I can get along on the latter, sir.

Q. I would like to know your understanding of what is the amount you are suing for?

A. Six hundred, sir.

Q. Your attorney has been here throughout these proceedings, by these proceedings, I mean these proceedings in Baltimore in this room?

A. Yes, sir.

Q. And by your attorney, I, of course, refer to your attorney in connection with this lawsuit we have talked about?

1675 By Mr. Correa:

Q. Finally, Mr. Witness, have you observed the fact that your attorney has been sitting throughout your testimony with the counsel supporting the complaint and conferring with him from time to time throughout the testimony?

Mr. Kelaher: Objection, your Honor. I don't mind some questions but this is about the—

Mr. Correa: It is the fact, isn't it? Could it be stipulated? After all, I don't insist on the witness testifying.

Mr. Kelaher: What implications you are trying to raise by members of the bar—

Mr. Correa: No—

Hearing Examiner Kolb: I will sustain the objection. Let's get to something worthwhile in this case.

Mr. Correa: I have no further questions.

Mr. Kelaher: Your Honor, just to clarify the record: The action brought by Mr. McMaster was under Section 1 of the Sherman Act, and Section 3 of the Clayton Act, and asks for—

Mr. Correa: Just a moment. I object to counsel making statements of this kind. I assume this is going to be based on evidence and not statements of counsel.

Mr. Kelaher: You raised the point again, I haven't.

Mr. Correa: Are you introducing the complaint?

1676 Mr. Kelaher: I am not introducing the complaint.

Hearing Examiner Kolb: I think we might as well leave this alone. We have gone far enough. We have shown the existence of the suit and that is all.

Mr. Kelaher: I just want to show the nature of it.

Hearing Examiner Kolb: I don't think that is material.

Mr. Correa: I have no further questions.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Thank you, Mr. McMaster.  
(Witness excused.)

1692 OSTER NORRIS was called as a witness for the Commission and, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Kelaher.*

Q. Will you please state your name and home address?

A. Oster Norris, 1922 South Road, Baltimore 9, Maryland.

Q. Are you associated with the business of R. W. Norris and Sons, Inc.?

A. That is correct.

Q. And what is your position with that company?

A. Treasurer, Sales manager, and vice president.

Q. Vice president?

A. Yes.

Q. What is the business address of R. W. Norris and Sons?

A. 342 North Gay Street, Baltimore 3.

Q. How long have you been associated with the Norris Company?

A. Thirty-five years.

Q. Would you please describe the nature of your company's business?

A. We are in the automotive wholesale parts and supply business.

Q. Do you sell any other products?

1693 A. Well, we sell allied products such as rims and wheels, which are allied to the automotive industries. Also upholstery supplies for the same industry.

Q. Will you please describe the present sales area of your company?

A. Presently it covers the state of Maryland, District of Columbia, a small portion of West Virginia, a small portion of Virginia, and a small portion of Pennsylvania.

Q. Going back to in or about 1947, will you state the sales territory of your company, and whether or not you had any branches at that time?

A. It covered the same states, only it was more intensively covered, and the states of Virginia, Pennsylvania, and Delaware were incorporated at that time on a larger scale.

At that time, in 1946, and for a few years following that, we operated nine other stores than our main office. They were in Oxford and York, Pennsylvania; Dover, Delaware; Salisbury, Maryland; Fredericksburg, Virginia; Harrisonburg, Virginia; Winchester, Virginia, and Cumberland, Maryland. I believe that is nine.

Q. Since 1946 or 1947 have you closed any of such branches and, if so, approximately when, by year?

A. Well, between the years of 1948 and 1952 we closed our stores in Fredericksburg, Harrisonburg, Dover, Oxford, Pennsylvania, and Hagerstown. I think I omitted Hagerstown before.

Q. Since that time have any been closed?

1694 A. Since that time we have closed our Salisbury, Maryland, branch.

Q. In what year, approximately?

A. In 1954. Our York branch in 1953. And our Winchester branch in 1955.

Q. At the present time how many branches do you operate?

A. One branch. That is in Cumberland, Maryland.

Q. What so-called TBA items are carried by your company? What brands?

A. All nationally-known brands, such as Fram oil filter line, Gates fan belt line, tires and tubes, everything that can be used in the automotive business, really. Delco batteries.

Q. What brand spark plugs?



A. Antolite spark plugs.

Q. What brand of chemicals?

A. DuPont and others.

Q. Does your company also sell what are referred to as "hard parts"?

A. Yes, they do.

Q. What class of customers are solicited by your company?

A. Gasoline service stations, commercial or fleet accounts, car dealers are the main customers.

Q. How many salesmen are employed in the sale of TBA items, approximately?

1695 A. They would run between twelve and fifteen. That will vary.

Q. How are such salesmen compensated?

A. By commission.

Q. How many delivery trucks do you operate?

A. I would say eight.

Q. Is that in your main office?

A. Yes.

Q. Do you have any trucks in your—

A. We have one truck in Cumberland.

Q. How many salesmen are at Cumberland?

A. Two.

Q. Two of the total number you mentioned?

A. That's right. We have other men that do sell, but we don't consider them in the category of salesmen, of course.

Q. Mr. Norris, are there other sellers of TBA items in the marketing area in which you operate?

1696 A. Oh, yes.

Q. Could you give us the names of some of those, please?

A. The R. J. Loock Company, Baltimore Gas Light

Company, Replacement Parts Company, Service Parts Company, Monarch Products, Salvo Auto Parts, and I guess there would be sixty additional.

Q. Does your firm operate in areas where Brooks-Huff Tire Company operates?

A. Yes, sir.

Q. And Firestone Stores?

A. Very definitely.

Q. And Stuart-Pressley Company?

A. Yes.

Q. And Goodyear service stores and district stores?

A. Yes, sir.

Q. How do your products compare as to price with these other sellers of TBA in your trading area?

A. I would say they are competitive in every respect, price, quality, both.

Q. "Price, quality—" what?

A. Both as to price and quality.

Q. How does your service compare?

A. We think it is every bit as good as any competitor we have.

Q. In both your former and your present marketing area, were there Shell, Atlantic, and Sinclair service stations?

A. Yes.

Q. You have testified that you closed—was it nine branches?

A. We closed eight.

Q. You have closed eight?

A. The ninth one is open.

Q. You have closed eight branches since 19—

A. Since 1948.

Q. Has this resulted in an increase or decline in your sales of TBA to the service station market?

A. Very definitely a decline.

Q. Do you have an approximation of the percentage of decline?

A. In TBA products?

Q. In TBA products to the service stations.

A. I would say approximately around thirty percent.

1698 Q. Has there been since about 1948 an increase or decrease, or has the volume remained the same, with respect to the sale of TBA to Shell and Sinclair service stations in your marketing area?

A. A decrease.

Q. And has that decrease been substantial?

A. We think so, yes, sir.

Mr. Kelaher: No further questions, your Honor.

Mr. Mason: No questions.

Mr. Ballard: Your Honor, I assume that all the testimony pertaining to Shell and Sinclair is received subject to a motion to strike?

Hearing Examiner Kolb: It is subject to a motion to strike by Atlantic.

You may be excused.

(Witness excused.)

Mr. Kelaher: We have one more witness who has traveled quite a distance. We would like to put him on.

1699 JOHN J. MIGAN was called as a witness for the Commission and, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Kelaher.*

Q. Will you please state your name and home address?

A. John J. Migan, Randallstown, Maryland. I live at Church and MacDonald Road.

Q. Mr. Migan, are you an employee of the R. W. Norris and Sons Company?

A. Yes, sir.

Q. How long have you been associated with that firm?

A. It will be twenty-eight and a half years.

Q. What is your capacity with that firm?

A. I represent them as a salesman on the road.

Q. Are you what is known as an outside salesman?

A. That's right.

Q. Have you been an outside salesman for some time?

A. Just about twenty years.

Q. What is your sales area?

A. I cover practically all of Baltimore County, part of Howard, part of Carroll, and part of Anne Arundel, and part of Prince Georges County.

1703 By Mr. Kelaher:

Q. Approximately how many Sinclair service stations are in your marketing area?

A. In the territory I cover I suppose there are fifty or better. I can't call on them all but I call on a good many of them.

Q. There are fifty or better, did you say?

A. Oh, yes.

Q. Approximately how many do you solicit?

A. I never took time to figure it. But I suppose about twenty or twenty-five I at least call on.

Q. Do you sell tires to Sinclair stations?

A. I do not.

Q. Do you sell batteries to Sinclair stations?

A. I don't believe I have a battery account in a Sinclair station right now. I have had them at times, 1704 but not in these days I don't, no.

Q. What brand of tires and batteries do you see in Sinclair stations?

A. Practically everything is Goodyear.

Q. What type of service station identification do you see with respect to TBA?

A. All Goodyear.

Q. What has been your—

Mr. Mason: If your Honor please, I would like to have a date fixed, because we do have this problem of Sinclair as opposed to Sherwood, and the difference between the plans.

If he is referring to the present time, it is obvious that his testimony doesn't bear on the sales commission plan which doesn't cover tires and batteries.

Hearing Examiner Kolb: They still call them Sinclair stations.

Mr. Mason: No. The old stations were Sherwood stations, and the present stations are Sinclair, and so identified. Sinclair stations are under a different arrangement than Sherwood was, and as to Sinclair there is no sales commission arrangement covering batteries and tires.

Mr. Kelaher: I beg to differ.

In one respect Sinclair signs have been in front of Sherwood stations for many years. They are Sinclair stations, in answer to his Honor's question.

1705 Mr. Mason: I am informed by the Sinclair people in the room that that is not the fact.

Mr. Kelaher: We have witnesses who will testify to that.

Mr. Mason: I don't think that has a bearing on my objection. I think we should have a time fixed, since there is this problem in the case, your Honor.

Hearing Examiner Kolb: Will you fix a time?

By Mr. Kelaher:

Q. What brands of gasoline are sold in these so-called Sinclair stations at the present time? What signs appear with respect to gasoline and petroleum products?

A. It is practically all Sinclair now, but there are a few places you can see Betholine yet, but not very much any more. They mostly all have changed back to the green signs of Sinclair.

Q. How long has this situation existed in your territory?

A. Gee, ever since they started. All the way up to today. They have been changed around so many different ways it is really hard to say. In the last couple of years I would say they have all gone to green, which is Sinclair.

Q. Prior to that time it was Sinclair—

A. It was yellow; Betholine before. What we would call a station Betholine, like Joe's Betholine Station; today is Joe's Sinclair Station. It has just been changed 1706 over in the last couple of years.

Q. Prior to that time, would the Sinclair products be sold in the Betholine stations?

A. Oh, yes. Quite a few of them had Sinclair signs at that time. I can recall back even as far as 1945-46 there were Sinclair signs.

Mr. Kelaher: Have we disposed of this motion or whatever it is?

Mr. Mason: My motion has to do with fixing a time.

Hearing Examiner Kolb: It has been fixed.

Mr. Mason: It has yet to be fixed.



Hearing Examiner Kolb: Two years.

Mr. Mason: He had the witness testifying as to his problem in selling tires and batteries, and we haven't had the time fixed as to when that occurred?

By Mr. Kelaher:

Q. When did you first experience difficulty in selling to Sinclair stations?

A. Between two and three years, I would say. Between two and three. Two years at least we have had so much difficulty, since it really went back to Sinclair.

Q. Back in the 1950's we will say, did you solicit business from the Sinclair stations?

A. Yes.

Q. Did you at that time sell them tires?

1707 A. No.

Q. Did you sell them batteries?

A. In some stations, yes.

Q. In the stations at that time what tires were—

A. It was all Goodyear at that time.

Q. The same with batteries?

A. Batteries was the same. That is correct.

Q. And accessories, what was your experience there?

A. I can go back to the years when Sherwood, if you could call it that, had Sinclair products. They recently, or in the last few years, have done away with that. It used to be their own brand, Sinclair. Then they went back to selling other advertised brands of merchandise, DuPont or some other type which they are selling today. They have done away with their names on the cans of a lot of it. But they used to have it Sinclair.

Q. There used to be Sinclair products in Sherwood stations, is that right?

A. Oh, yes. Yes, sir.

Q. Do you recall any conversations with Sinclair service station operators concerning TBA?

Mr. Mason: I suggest that question can be answered Yes or No. If we are going further, we want details.

The Witness: I would say yes.

1708 By Mr. Kelaher:

Q. Would you please state the approximate time and the names of any Sinclair Service station operators with whom you discussed TBA?

A. I could almost say them all. But actually to name anyone—I stopped calling on one account I recall, about two years ago, which would be Arbutus Betholine, at that time it was called:

Prior to that we had sold him merchandise, such as batteries, anti-freeze, and so forth. The boys were very fair. They came to me and told me that they were compelled to throw out my line and take on lines that they were supposed to from the Sinclair Company.

Mr. Mason: I move to strike the testimony as being the rankest hearsay and obviously characterizations of the witness and not the person who spoke to him.

Mr. Kelaher: He is testifying as to what he was told by a service station operator or operators.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Kelaher:

Q. You placed that time about two years ago?

A. I would say it was a little longer than two years ago because when he cancelled his anti-freeze order from me he had already—it was too late then to try to rein-  
1709 state him, or sell him. He had already placed his order, cancelled mine and placed his through Sherwood at that time.

Q. Would that place it sometime in 1955?

A. Yes.

Q. And up to that time were you selling him—what brand of batteries were you selling him?

A. I was selling him Delco batteries up until that time.

Q. After that time did you continue to sell him Delco batteries?

A. I did not. He told me I had to get them out.

Q. Do you recall the names of any other Sinclair dealers with whom you had conversations concerning TBA?

A. Well, I have one today out on Windsor Mill Road, 5816 Windsor Mill Road, George Schwartz.

Q. Would you state the substance of your conversation?

A. He is a personal friend and I do sell him a little merchandise. But I can't sell him what I would like to, due to the fact that he said he has to buy from Goodyear.

Q. Who is the Goodyear supplier in that area?

A. In that area I think it is Brooks-Huff.

1710 Q. Did you at one time call on a Sinclair dealer by the name of Osborn?

A. Yes, sir; I did.

Q. Did you call on him—

A. At Reisterstown.

Q. Did you call on him for any length of time?

A. I called on him ever since he was in business in that area, I suppose.

Q. Did you have any conversations with him concerning his TBA?

A. Oh, many a one; yes, sir.

1711 Q. Are there any Shell service stations in your marketing area? In your sales area?

A. Oh, yes, there are about I guess eight or ten in my area.

Q. Just a relatively few number of Shell, is that right?

A. That is right.

Q. Do you sell tires to Shell operators?

A. No, I do not.

Q. Do you sell batteries to Shell operators?

A. No, sir; I do not.

Q. Do you sell accessories to Shell operators?

A. No, sir, they are the hardest nuts to crack  
1712 that I have to handle.

Q. What TBA products do you find in Shell service stations?

A. Well, they have Goodyear and Firestone.

Q. What service station identification do you find in Shell service stations with respect to TBA? I am  
1713 referring now to window valances, outdoor signs, et cetera.

A. Most I see is all Goodyear. There is some Firestone.

Mr. Ballard: I move to strike the answer because it is Shell/Firestone.

Hearing Examiner Kolb: He is explaining the station. Some have Firestone and some have Goodyear. I see no occasion for striking at that point.

1714 By Mr. Kelaher:

Q. Based on your own knowledge, where are non-sponsored TBA items displayed in Sinclair stations? Do you get the question? By non-sponsored I am referring to TBA items other than Goodyear?

A. They would put them, most of them would put them in most any conspicuous place where it would be seen by the public or the buyer.

Q. Do you ever notice TBA products in the back of service stations?

A. Oh, yes.

Q. In back of Sinclair stations?

A. Yes, I have seen them back of there.

1715 By Mr. Kelaher:

Q. Do you know who the principal Goodyear TBA suppliers are for Sinclair stations in your sales area?

A. I don't suppose I would know them all.

Q. The principal ones?

A. I do know of Brooks-Huff and Pressley, out on Washington Boulevard. I understand Kunkel, in Bel Air.

Mr. Kelaher: No further questions.

1717 *Cross-Examination by Mr. Mason.*

Q. Mr. Migan, do you know a Sinclair service station operated by R. P. Haight?

A. Yes.

Q. About a block from where you live, isn't it?

A. Yes, sir.

Q. What TBA has he carried for years?

A. Well, I am not too familiar with him.

Q. But he is only a block away from where you live?

1718 Yes, sir.

Q. Isn't it a fact he carries Firestone TBA almost entirely?

A. I couldn't tell you. I never as in the station since he has taken over. Before that, when his brother had it, and Mr. —several other people had it before then, I was in there. But not since he took over.

By Mr. Ballard:

Q. Mr. Migan, my name is Ballard and I represent the Atlantic Refining Company.

Let me first ask you, how many accounts do you have all told that you call on?

A. That I call on?

Q. Yes.



A. I think on my list I have about 185.

Q. About how often do you get around to see them?

A. Some of them every two, some three, some every four weeks.

1721 Q. Mr. Migan, are you the only supplier of Delco batteries in the city?

A. I wish we were.

Q. There are a number of others, is that right?

A. Indeed there are.

Q. What other suppliers handle Delco?

1722 A. Well, Parks and Hull. It is on Cathedral Street. Service parts company; and R. H. Boyd, I believe that is right.

I can't think of them that fast but there are quite a few of them. F and L Auto Supply; Salvo; I think Mazor Brothers. I just don't know them all. I have been in the meeting when they were all in one group but I can't recall who they were. I know there are quite a few of them.

*Redirect Examination by Mr. Kelaher.*

Q. You were asked by counsel for respondent Goodyear about a service station operated by a Mr. Haight. You stated that you didn't call on that station when Mr. Hight operated it but you were familiar with it prior thereto. Approximately, when did the present Mr. Haight take over?

A. I would say about four years ago. I don't know exactly. I have known Mr. Haight since he was just a small tot.

Q. What brand of TBA was carried in the station 1723 when you were calling on it?



A. I could sell him most anything I wanted to prior to that.

Q. What service station identification was shown?

A. It was really a Goodyear set-up. He had other merchandise in them days. But alongside of me you might say. I didn't have to go in the back door or front to get my merchandise in. I did all right.

Q. What do you mean by going in the back door?

A. Well, you have to know a lot of tricks these days if you want to honestly make a living. I suppose you would call it that way. I can recall the days when we had no competition at all, you might say, in the TBA, or your other parts and accessories. They were all glad we had them, especially during the time when they were allocated, particularly during the war and after the war for a short period, when we had merchandise. I had merchandise allocated to me and I could place them any place I saw fit, and I helped a good many of these boys out, and they never forgot it. Today, I still get some business from them which I wouldn't get if I hadn't known them and been personally acquainted with them for years. That is the only way I can really get any volume at all. They do a lot of criticizing and a lot of talk, but still they come back to you and say, 'You helped me out, I will go along with you,' which I do get them.

Q. Do you know whether the Haight Station is a 1724 company-owned station or an independent station?

A. I think it is a company-leased station. It is owned by the Randallstown Bank.

I think it is leased to Sherwood, or they lease it and then sub-lease it. I think that is the idea.

Mr. Mason: We will stipulate that it is a leasee station.

Mr. Kelaher: Do you mean by that that the prop-

erty is owned by someone other than Sinclair and then sub-leased to—

Mr. Mason: I can find out the facts. Yes, that is the fact.

Hearing Examiner Kolb: The operator doesn't own it in other words?

Mr. Mason: That's right. Whether—

The Witness: The operator doesn't own it.

1727 EUGENE SAYAGE was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Kelaher.*

Q. Please state your name and home address.

A. Eugene Savage, 4301 Fairview Avenue, Baltimore, Maryland.

Q. Mr. Savage, are you associated with the Burke-Savage Tire Company, Inc.?

A. I am.

Q. What is your position with that company?

A. I am an outside salesman and I am the treasurer of the firm.

Q. How long have you been with Burke-Savage?

A. I have been with Burge-Savage twelve years.

Q. How long have you been an outside salesman with that firm?

A. About nine years.

Q. That would put it back to about 1948, is that right?

A. Approximately.

Q. Will you please describe your company's business?

A. We are basically wholesalers. We go after the serv-

ice station and garage business. We also carry retail 1728 and commercial business.

Q. What products do you carry?

A. We carry two major brands. We carry the U. S. Royal line and we also carry the Armstrong tire line.

Q. Do you carry batteries?

A. We also carry batteries. U. S. Royal batteries.

Q. Do you carry accessories?

A. Not now, No. We dropped the complete accessories line.

Q. At one time did you carry a line of accessories?

A. Yes, we did.

Q. What brands and what products primarily?

Mr. Correa: Could we have a date fixed, please?

The Witness: When we carried the accessories?

Mr. Correa: When you dropped the accessories.

By Mr. Kelaher:

Q. We will develop that if you will just let me work this out. I think we will get right along.

Mr. Correa: Is there a mystery about it, Counsel?

Mr. Kelaher: He can't answer more than one question at a time.

By Mr. Kelaher:

Q. Go ahead.

A. What was the question?

(Question read.)

A. We carried U. S. Royal accessories. We carried 1729 the U. S. Royal fan belts; we carried the AC spark plugs; we carried the complete line of Whiz, which is a Hollingshead product, chemical line.

Q. During what period did you carry such products?

A. We were carrying the line when I came with the firm. We were carrying these accessories lines. I would

say that we were carrying the lines up until about six years ago.

Q. And after that time did you continue to carry any accessories at all?

A. We slowly went out of the accessories business and today we have nothing.

Q. Mr. Savage, how many salesmen does your firm employ?

A. Twelve salesmen.

Q. How are they compensated?

A. Do you mean today how many we employ?

Q. Today, yes.

A. Today we have eight salesmen.

Q. And at one time did you employ more salesmen?

A. Yes. When I went with the firm we had 12 salesmen.

Q. How are these salesmen compensated?

A. We pay our men a weekly salary. We pay them commissions on their sales. We also pay them a bonus at the end of the year.

Q. How many trucks does your firm operate?

A. We operate eight trucks.

1730 Q. What is the sales area of the company?

A. We cover the complete Baltimore area and sort of the outlying sections. I would say we cover say within a thirty-mile radius.

Q. Of Baltimore?

A. Of Baltimore.

Q. Are you a large wholesaler of U. S. Tires in this area?

A. I would say we are the largest tire wholesaler in the Baltimore area.

Mr. Correa: If your Honor please, I think I shall have to move to strike that answer as unresponsive because it leaves the question unclear. Counsel asked the question, is the witness' firm a large wholesaler of U. S. tires and the

witness replied by saying we are the largest tire wholesaler. Whether he means tires in general or U. S. tires is left obscure by the unresponsiveness.

The Witness: I would say we are the largest U. S. wholesalers.

Mr. Correa: That solves the problem.

By Mr. Kelaher:

Q. Who are some of the other sellers of tires in your sales area, large sellers?

A. Who are some of the other sellers of U. S. tires, or of other tires?

Q. Of other tires?

1731 A. Well, Brooks-Huff is in our area selling tires; Stuart-Pressley—

Q. Which brand?

A. Brooks-Huff carries the Goodyear tires.

Q. Did you mention Pressley?

A. Pressley also carries the Goodyear line. Also, of course the Goodyear store itself sells tires to dealers.

Q. Are there Firestone stores in Baltimore?

A. There are two Firestone stores that sell tires.

Q. And are there other sellers—who are the principal sellers of batteries in your sales area who sell other than U. S. batteries?

A. These batteries are also sold by the same suppliers. Brooks-Huff carries the Goodyear battery and so does Pressley carry Goodyear. And of course the Goodyear store also of course carries Goodyear batteries.

Q. What type of delivery service do you furnish to your customers?

A. We pride ourselves on the same day delivery service. We give our dealers when they call up, we give them the service the same day. In fact, it is not uncommon for us to make deliveries within two hours or so after they call.

Q. And do you know whether Brooks-Huff has similar delivery service?

A. To my knowledge, in talking to these dealers, 1732 they all tell me that Brooks-Huff uses a two-day delivery service. They tell them two-day delivery in that area, and and they only get deliveries on those two days.

Q. Do you mean by that that they will specify two days in the week?

A. That is right. In East Baltimore, for instance, they may tell the dealer he can get deliveries on Mondays and Thursdays. And that is the only two days he can call in and get deliveries.

1733 By Mr. Kelaher:

Q. You stated that you have been an outside salesman from approximately 1948 to date with your company, is that correct?

A. That is correct.

Q. During the year 1955, approximately how many Sinclair stations were in your sales territory?

A. 1955?

Mr. Correa: I have the same objection, if your Honor please. I take it I can be understood as having a continuing objection to this line of questions, and the answers will be received subject to a motion to strike?

Hearing Examiner Kolb: Yes, that is right.

Mr. Correa: May I say further on this, I apprehend from the form of counsel's question that conceivably counsel is thinking of the wrong date. The date when the Sherwood plan ended and Sinclair took over was January 1, 1956.

Mr. Kelaher: That is why I asked about 1955.

Mr. Correa: Prior to that date?



Mr. Kelaher: 1955 is prior to January 1, 1956.

Mr. Thompson: Is it understood, your Honor, that any testimony relating to Sinclair or any oil company other than Atlantic is received subject to my standing objection?

Hearing Examiner Kolb: And a motion to strike.

1734 Mr. Correa: May I state further, if your Honor please, this one point because I am not at all certain it is in your Honor's mind respecting this objection. There was indeed in 1955 a Sinclair plan which covered only accessories. There was also a plan which ended December 31, 1955 with Sherwood Brothers, Inc., which covered TB and A—tires, batteries, and accessories.

If counsel means Sinclair stations, then I submit his question, even on his theory, has no relevance. If he means Sherwood Brothers, Inc., stations, then of course his question—

Hearing Examiner Kolb: That would be Betholine?

Mr. Correa: Betholine was the trade name in which gasoline was sold. They were called Betholine and Sherwood.

Mr. Kelaher: At that time Shewood Brothers, Inc. was a 100 percent owned subsidiary of Sinclair Refining Company.

Mr. Thompson: Does that appear of record?

Mr. Kelaher: No. I say at that time it was and we will substantiate that.

Mr. Correa: We will concede it.

Mr. Thompson: No, I don't concede it.

Mr. Correa: I don't think you would, because I don't see how this evidence bears on you.

Mr. Thompson: Furthermore, I don't think it is a correct statement of the fact.

1735 Mr. Correa: In 1955?

Hearing Examiner Kolb: I understand we have the Sinclair testimony to be received in the future.

Mr. Correa: We will leave it in the future then. We will make no concessions.

By Mr. Kelaher:

Q. Let me clarify this before you answer about the Sinclair stations. Did you carry accessories during the year 1956 at all in your line?

A. In 1956, with the exception of a few accessories that we had left over in stock, I say we were completely out of the accessories business. In 1956.

Q. Did you solicit accessories business at all in 1956?

A. No, we didn't.

Q. So there will be no controversy, I would like to have you confine your answers to the period up until January 1, 1956.

A. All right.

Q. During the year 1955, approximately how many Sinclair stations were in your sales area?

A. Approximately 50.

Q. What has been your experience during your period as an outside salesman in selling TBA to Sherwood or Sinclair stations?

Mr. Correa: I object to the form of that question, if your Honor please. Which does he mean, Sherwood 1736 stations under one plan, or Sinclair stations which were under another? I think to mix the two in one question is most unfair and misleading.

Mr. Kelaher: I will use the word "Sherwood" if it will make them happier because we are not going to quibble about it.

Mr. Correa: Let's stick to the facts. It is not a matter of making anybody happy, as far as I know.

A. You want to know what my experience is?

By Mr. Kelaher:

Q. Your experience from 1948 to 1955 in selling to Sherwood service stations.

A. I found that it was very tough with the oil company competition to stock tires in these stations. They were reluctant to stock any brands except Goodyear tires. I had no chance of putting in any sort of advertising or identification of U. S. or Armstrong tires. And in many cases the dealers completely stopped dealing with Burke-Savage.

1737 Q. Would you please state the names of Sinclair dealers whose business was lost during the period 1948 to 1955?

Mr. Correa: I take it counsel means Sherwood?

Mr. Kelaher: Sherwood, rather.

By Mr. Kelaher:

Q. Go ahead.

A. Due to the fact that these stations are lost—and I don't call on them anymore, their names sort of slipped my mind, I did take the chance to look at some of the older records that we did get volume from and do not anymore. We called on Tucker's Betholine station at 1601 Lafayette, from whom we do not receive any more business. In fact, I don't believe Mr. Tucker is in that station anymore.

Q. I would like you to describe with respect to these specific names which you may give, the general business you did with them, and whether or not you lost business, and if so, whether or not you had any conversations with these dealers, and the approximate dates of such conversations?

A. Mr. Tucker had U. S. Royal tires in his station and displayed them at one time, and called us—

Q. About what year?

A. Approximately 1952-53.

Q. Go ahead.

A. He called up Burke-Savage and asked us to take back all—

Mr. Correa: If your Honor please, I wish the witness would be told that if he had the conversation would he say it.

The Witness: Yes. I am the salesman and I have the direct contact with these stations. Mr. Tucker called me up and asked me to take back all the U. S. tires because he was told that he could not stock U. S., he had to stock Goodyear. We picked up the tires in the station. Not long after that he lost his lease or such and he is not with that location anymore.

By Mr. Kelaher:

Q. When he was saying "they" to whom was he referring? Did he state?

A. He was referring to Betholine.

Q. Go right ahead.

A. On 41st and Falls Road we called on a Russell Edrington. At one time he was our largest dollar-and-cents tire dealer that we had through service stations. He was a large tire merchant. He told me in person, not on the telephone, that his lease was in jeopardy because he 1739 did not handle tires through the oil company, and within a few months from that time he lost his lease. He is not with the location anymore.

Mr. Correa: Could we have a date on this conversation?

The Witness: This was around 1952. Mr. Patterson took over the same station. I called on him for several months. He told me he could not deal with me, otherwise he would lose his lease, also.

In 1952—

By Mr. Kelaher:

Q. When was your conversation with Mr. Patterson? Did you fix the date?

A. This was in the latter part of 1952. In 1952 Harry Simms, on—I can't quite get the location at this time, about the 4700 block of Reisterstown Road—Mr. Simms was a long lifetime school buddy of another salesman, and—

Q. Of your company?

A. At our company. They went to school together. Mr. Simms carried the U. S. Royal tires through the war years. We gave him as many tires as he needed at that time. And after the war years he dealt with Burke-Savage up until 1952. He called our salesman up, and I went out with our salesman and Mr. Simms told Mr. Nate Schmar and myself that he cannot carry our line of tires anymore, that his lease will be up in one week, the renewal of his lease, and we took our tires out. From that day we 1740 have never sold him any more tires.

Q. Is Mr. Simms at that same location?

A. I don't even know. I have never been back.

Q. When was this conversation with Mr. Simms?

A. It was sometime in 1952.

1741 Q. Did Mr. Rock discontinue purchasing tires from you prior to the time he lost his lease?

A. I would say it was almost instantaneous, that is, he carried tires up until the time that he lost his lease. We lost the business when he lost the station.

Q. Do you have any other former Sinclair customers whose names you can give us?

A. I have a station here, I have listed a man named Joe Fotia, who was sometime operating under the Manor Service Station at 2700 block of Old North Point Road. Mr. Fotia at one time carried—his purchases with Burke-Savage Tire Company ran in the neighborhood of 5 or 6 thousand dollars a year. And today his purchases run less than

\$500. Mr. Fotia told me it was due to the fact that the oil company made him buy Goodyear tires.

Q. When did this conversation take place with Mr. Fotia?

A. About '53—between '53, possibly the end of '53 1742 or closer to '54.

Q. Did the volume of your sales to Mr. Fotia decline after that conversation?

A. Yes. We probably do less than \$500 a year business with Mr. Fotia.

Q. And in 1955, approximately what volume would you say you did?

A. You mean before that?

Q. Before January 1, 1956?

A. We did 5 or 6 thousand dollars worth of business with him annually.

Q. That is before this conversation you stated?

A. That's right.

Q. You stated, just to clarify the record, when was this conversation again?

A. About the latter part of 1953.

Q. Was there a steady decline in your sales volume from that time to the present?

A. That's right.

Q. Do you have any other dealers?

A. Yes. Charles Bodine, 1501 Martin Boulevard. Mr. Bodine did between 6 and 7 thousand dollars worth of tire business with Burke-Savage from a period of around 1949 up until 1953; his annual purchases were about that. He told me approximately the same time that the oil company representatives had wanted him to handle Goodyear tires and at that time his sales dropped. Today we are 1743 doing about \$1,000 a year business with Mr. Bodine.

Hearing Examiner Kolb: What kind of a station does he operate?



The Witness: This is a Sinclair Station.

Mr. Kelaher: Your Honor, all the stations that have been mentioned to date are Sinclair dealers.

Hearing Examiner Kolb: What about Sherwood?

Mr. Kelaher: These—

Hearing Examiner Kolb: You are confusing this record if you are talking about Sherwood Station and calling them Sinclair.

Mr. Kelaher: So there will be no confusion, any time I have used Sinclair, the names are used so interchangeably in the trade that it is difficult to disassociate them, but apparently Sherwood, we will say was Sherwood until January 1, 1956, and after that it became a division of Sinclair. So, if I have used Sinclair—

Hearing Examiner Kolb: It was Betholine up to 1956.

Mr. Kelaher: It was Sherwood Brothers, Inc.

Hearing Examiner Kolb: Didn't they handle Betholine rather than Sinclair?

Mr. Kelaher: They handled Betholine-Sinclair products, according to our information.

Mr. Thompson: I don't concede for a moment that Sherwood and Sinclair are synonymous, or that they are 1744 used interchangeably in the trade. I don't think there is any support in the record for that. I simply want to note the fact that I don't agree with Mr. Kelaher's statement.

Mr. Correa: It might be further noted, as your Honor will recall, the last witness yesterday was quite clear, and he was a man of long experience in the trade, on the difference between them. Sherwood Brothers, Inc., as I understand it, your Honor, was a separate corporate entity until December 31, 1955. They did distribute, among other things, petroleum products of Sinclair Company.

Mr. Kelaher: So there will be no confusion about this testimony, your Honor, Sherwood Brothers, Inc., was a

separate corporation until January 1, approximately January 1, 1956.

Mr. Correa: Exactly.

Mr. Kelaher: These dealers that we have discussed up to this point, that the witness has testified to, had leases with Sherwood Brothers, Inc.

Mr. Correa: That is correct.

Mr. Kelaher: And Goodyear had an override TBA commission with Sherwood Brothers, Inc., during that period.

Mr. Correa: We had a sales commission plan.

Mr. Kelaher: Otherwise known as the sales commission plan.

By Mr. Kelaher:

1745 Q. Was Mr. Bodine one of your largest accounts?

A. He was one of our largest service station accounts; that is right.

Mr. Correa: Excuse me. I may have missed it. Was there a date on the conversation with Mr. Bodine?

By Mr. Kelaher:

Q. What was the—

A. It seemed to me like, it seemed there was a pressure that all came about the same time, which was about the latter part of '53.

Mr. Correa: The question is when was the time.

The Witness: The latter part of '53.

Mr. Kelaher: I think that answers the question.

Mr. Correa: May the record show that throughout his testimony as to these specific names, the witness has been referring to a sheet of yellow paper which he has before him.

The Witness: Well—

Hearing Examiner Kolb: That is all right.

By Mr. Kelaher:

Q. Do you have the names of any other Sherwood dealers whom you were calling on at that time?

A. I have two more.

Q. Will you please state their names?

A. A partnership of Strickland and Ruttig, at 5910 Eastern Avenue. The account gave Burke-Savage 1746 approximately \$4,000 worth of business annually up until '53, and at that time Mr. Strickland called me up and asked me to come down to the station, and told me that he will not be able to stock or display any more U. S. Royal Tires; in fact, we took back the tires that he had in stock and credited the account.

Q. Did you state what his purchases were up until that time?

A. Approximately \$4,000.

Q. Was there a decline?

A. It declined from the latter part of '53; it started to decline at that point.

1747 By Mr. Kelaher:

Q. After your conversation with Mr. Ruttig?

A. No, Mr. Strickland.

Q. Did you cease having Strickland-Ruttig as a stocking customer?

A. After that conversation?

Q. Yes.

A. No. After this conversation there was no more stock carried.

Q. And your sales then were—

A. Our sales started to drop at that point.

Q. What was the approximate volume in 1954 and '55?

A. Approximately a thousand to \$1,400. It would vary.

Q. And since that time, since your conversation with Mr. Strickland, where has Mr. Strickland, where has Mr. Strickland and Ruttig placed the tires they purchased from you?

A. They put a few tires in the backroom where they kept the oil. They did that for a while and finally they stopped doing that. Today, they carry complete Goodyear stock.

Q. Did you say you had another name?

A. I had a John Sinclair Station, Eastern and Kingston, and this was all about the same time, 1953. Mr. John 1748 Sludak—I don't think I know the correct spelling—he operated under John Sinclair Station—he sold John tires. I even sold him tires previously, when he was in another station, I sold him tires from approximately 1948 until 1953. At this time John told me that the oil companies were putting a lot of pressure on him and he could not handle any more U. S. Royal tires. And a few months later he left the station.

Q. Was John operating a Sherwood station?

A. That's right.

Q. Was Strickland and Ruttig operating a Sherwood station?

A. That's right.

Q. Where did Mr. John Zalondex place his U. S. tires after this conversation you had with him?

A. He also placed them in a backroom.

Q. Did you at one time call on a Sherwood station by the name of Rittermeyer at Pulaski Highway and Chesaco Street?

A. That's right.

1749 Q. Did you have any conversations with Mr. Rittermeyer concerning the purchase of tires by him?

A. Yes, I did.

Q. Approximately, when was that conversation held, and what was the substance of it?

A. Well, let me—do I have that answer that— In other words, this is what I want to bring out: Mr. Rittermeyer—

Q. Is he an active account?

A. No. That is the reason I wrote the name down on here. I haven't seen the man in six years, and I don't think it is fair to answer that. I have more present conversations with these other dealers that I think I could answer.

Q. Who was the primary supplier of Goodyear tires, or of tires, to Sherwood stations during the period 1948 to 1955?

A. Brooks-Huff.

Q. Brooks-Huff, you testified, sells Goodyear tires?

A. That's right.

Q. How did your prices compare with Brooks-Huff prices during the period you are testifying to, 1948 to 1955?

A. Well, being of our large volume, we have always worked on a short margin of profit. Our prices, we were able to sell these stations because our prices were lower. We gave a longer discount to the dealers on tires. In other words, we sold at a larger discount.

Q. You gave the dealers, you offered the dealers a lower price?

A. A lower price, that's right.

Q. How did your delivery service compare with Brooks-Huff Tire Company?

A. As I stated before, we give, we pride ourselves on same-day-delivery. Our competitors use a two-day-delivery service which gave us a tremendous advantage. We were able to sell these dealers from both price and delivery.

Q. What type of service station identification did you

see in Sherwood stations during the period 1948 to 1955, inclusive?

A. I saw only Goodyear identification.

Q. Window valance, you are referring to?

A. Yes.

Q. And outdoor signs?

A. Decals, metal signs hanging from the outside.

Q. Did you ever attempt to place any U. S. Royal or Armstrong advertising in such Sherwood stations during the period 1948 to 1955?

A. Yes, I did. I tried in many cases to get the dealers to advertise our products.

1751 By Mr. Kelaher:

Q. Did you ever solicit the business of new Sherwood stations or Sherwood stations whose operators changed during the period 1948 to 1955?

A. Yes, I did.

Q. Let me ask you if you have made sales to a new station, or a station with a new operator—I am referring to Sherwood stations—during the period 1948 to 1955?

A. We made very limited sales to new stations.

Q. Did you solicit such business?

1752 A. Yes, we did.

Q. Approximately, how many Atlantic stations are in your sales territory? And I might say, as I understand it, the Firestone-Atlantic TBA sales commission plan is still in effect in this area.

Mr. Thompson: When you say Atlantic, I presume you mean Sherwood.

Mr. Kelaher: I mean Atlantic.

Mr. Correa: I know nothing about the Firestone-Atlantic sales commission plan and concede nothing with respect to it.



Also, if your Honor please, if counsel is going into Atlantic, I take it the testimony may be received subject to my motion to strike.

Hearing Examiner Kolb: Subject to a motion to strike by Goodyear.

Mr. Thompson: I move at this time to strike all the testimony relating to Sherwood and Sinclair.

Hearing Examiner Kolb: The motion will be denied. The testimony will be received subject to a motion to strike by Atlantic.

1761 By Mr. Kelaher:

Q. Are there any Shell service stations in your 1762 area carrying identification other than Firestone?

A. Yes. I see some Goodyear identification in some of them.

Q. Do you recall any conversations with Shell dealers handling Goodyear, carrying Goodyear TBA identification, concerning the purchase of U. S. tires?

A. Yes. I called on a station named Steve's Shell, on Belvedere and Cordelia, that carried Goodyear tires. I sold him some U. S. Royal tires. And slowly he stopped handling Goodyear, and within several months from that point he was removed from the station.

Q. When—

A. This was approximately 1952.

Q. Did you ever have any conversations with the operator of Steve's Shell?

A. Yes, I did.

Q. Just state specifically what your conversation was with the operator of Steve's Shell.

1763 The Witness: His conversation was that, due to the fact that he was handling our products, he had jeopardized his lease.

By Mr. Kelaher:

Q. Who are the principal suppliers of Goodyear products to Shell service stations in your marketing area?

A. I would say Brooks-Huff.

Q. Does Stuart-Pressley—

A. Stuart-Pressley also carries the Goodyear line to the Shell stations.

Q. How do your prices compare with these suppliers of Goodyear products to Shell service stations?

A. We were always able to sell these stations because our price was lower.

Q. How does your service compare?

A. We still pride ourselves on our two-day service, and to my understanding, we are competing against—we give same-day service, and we are competing against the two-day service.

Q. Have you attempted to place advertising matter relating to your firms' products in Shell service stations?

A. Yes, we—

Mr. Gorrea: Would you repeat that?

(The reporter read the question.)

Hearing Examiner Kolb: Selling Goodyear products.

1764 The Witness: Yes, we have. We tried to put identification in Shell stations, but the dealers would not allow us to put our identification in.

By Mr. Kelaher:

Q. You stated that you, at one time, carried a competitive line of accessories?

A. Yes, sir.

1765 Q. Did your sales of accessories increase, decrease, or remain the same on sales to Sherwood stations during the period 1948 through 1955?

A. They decreased.

Q. Was the decrease substantial?

A. They decreased to a point where we stopped handling them all together.

1767 By Mr. Kelaher:

Q. Did your sale of accessories to Shell service stations carrying Goodyear identification increase, decrease, or remain the same since 1948?

A. They decreased.

Q. Did they decrease substantially?

A. They decreased into nothing.

1768 Q. Mr. Savage, I would like to have you state more specifically how long your company carried accessory products?

A. As I said, the company was handling accessories—we have been in the business close to forty years, and the company was handling accessories when I went with the firm. In 1951 our accessories business started to drop off very badly, and over a period of a few short years we finally went out of the complete accessories line.

Q. In 1951 you still had a stock of accessories?

A. That's right.

Q. And you were soliciting—

A. We were still soliciting from our stock, but our sales had dropped off so badly because it was so tough to sell oil company leased service stations, that we eventually stopped buying accessories.

Q. After you stopped buying, you still had a stock on hand?

A. We still carried a stock, yes.

Q. You still solicited accessories business?

1769 A. We solicited from our stock.

Q. Until your stock was exhausted?

A. That's right.

Q. How long a period did it take to exhaust your stock?

A. Approximately two years.

Mr. Kelaher: No further questions, your Honor.

Mr. Correa: May we have a short recess?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

1770 Hearing Examiner Kolb: The hearing will come to order.

*Cross-Examination by Mr. Correa.*

Q. I take it, sir, that you understood your assignment here this morning to be to testify against certain tire companies and certain oil companies, including—

Mr. Kelaher: Objection.

Mr. Correa: May I finish?

Mr. Kelaher: Yes, and I will object.

By Mr. Correa:

Q. (Continuing.) —including among the tire companies my client Goodyear, is that right?

Mr. Kelaher: I object to the form of the question.

Hearing Examiner Kolb: Objection overruled.

A. My only understanding was to come here today to tell the truth about our business.

By Mr. Correa:

Q. And you were telling the truth when counsel asked you who your competitors were—

A. That is right.

Q. (Continuing.) —in the sale of tires to service sta-

tion dealers and others? And you mentioned Brooks-Huff, a Goodyear dealer?

A. That is right.

Q. Pressley, a Goodyear dealer?

1771 A. That is right.

Q. A Goodyear store and the Firestone store?

A. That is right.

Q. Did you mean to imply that you have no other competitors in the sale of tires in this area?

A. No, I didn't.

Q. You have a great many others, do you not?

Mr. Kelaher: Let him answer.

Mr. Correa: He answered. He said "I didn't."

Mr. Kelaher: He hadn't completed his answer.

Hearing Examiner Kolb: Stop this controversy. Answer the question.

By Mr. Correa:

Q. The pending question is that you have a great many others, do you not?

A. Through service stations, no, there aren't a great many other ones. A very few. He asked me for some of my prime competitors, and I gave him a list of some of the prime competitors. There are several others, but not too many.

Q. Are Goodrich tires sold in your marketing area?

A. That is right.

Q. Who sells Goodrich tires?

A. There is a Goodrich store.

Q. Is the Goodrich store a competitor of yours?

A. That is right.

1772 Q. Are General tires sold in this marketing area?

A. Not in service stations, no. General is to my knowledge—I have never seen a General tire sold through service stations.

Q. Are Lee tires sold in this marketing area?

A. Very, very limited. Very limited in my customers that I call on, that I see about tires.

Q. Could you answer the question?

A. Are Lee tires sold in this area?

Q. In your marketing area?

A. Yes, Lee tires are sold. But in a small degree.

Q. You say that you had the same-day delivery—

A. That is right.

Q. (Continuing.) —in your company. And you said that Brooks-Huff has a two-day delivery?

A. That is right.

Q. Don't you know that the fact is that Brooks-Huff has the same-day delivery?

A. If they do, I have been in service stations when they have called Brooks-Huff on the phone, and actually heard conversations where they told them they couldn't deliver until certain days of the week.

Q. Don't you know it is a fact that Brooks-Huff currently maintains a truck to make deliveries in response to calls within a matter of hours?

A. You say currently. I don't like to cross-examine you. Are you talking about—is that something new that he has just done in the last few months?

Q. I am asking you—no, it is not but I am asking you what is the situation now.

A. To my knowledge the situation is the same, because I have dealers calling me up very recently and telling me that they have actually called Brooks-Huff and couldn't get the merchandise right away, and they have called Burke-Savage because they knew they could get same-day delivery.

Q. You have said that you sold tires at a lower price than Brooks-Huff?

A. In most cases, yes.



Q. What tire were you referring to? U. S. Royal or Armstrong?

A. Both.

Q. Do you sell U. S. Royal and Armstrong at the same price?

A. Well, it is a pretty hard thing to—

Q. Don't you know whether you do or don't, Mr. Witness?

A. Yes, we do know.

Q. What is it?

A. Are you talking level for level?

Q. I am talking about the price that the dealer pays for the tire he buys.

A. We sell first line Armstrong tires at a lower price than we sell first line U. S. Royal tires. But we sell higher level tires in Armstrong at a better recovery than 1774 we sell premium U. S. tires. Does that answer your question?

Q. Do you sell U. S. batteries, also?

A. That is right.

Q. You mentioned Tucker's Betholine station among those you listed on your sheet of yellow paper?

A. Yes.

Q. And you said Tucker's Betholine station, if I recall correctly, that you were successful in selling him tires and that not long after he lost his lease?

A. That is right.

Q. Don't you know that it is the fact that Tucker never lost his lease and in fact has two stations under lease, previously from Sherwood and now from Sinclair?

A. He is still at that location, is that right? Mr. Tucker is still at the same location?

Q. Yes. As to one of the stations. The other you didn't mention.

A. He does not deal with Burke-Savage anymore.

Q. That is not the same thing as losing his lease, is it, Mr. Witness?

A. No, it isn't.

Q. You mentioned Mr. Rock?

A. That is right.

Q. And you said that he stopped buying tires from you and also lost his station?

1775 A. That is right.

Q. Did they happen together?

A. At the same time.

Q. Don't you know that Mr. Rock went broke and that that was the reason he discontinued his station?

A. He went broke?

Q. Don't you know that?

A. No, I didn't. He always paid his Burke-Savage bills.

Q. You mentioned John Zaloudex.

A. That is right.

Q. And you said that he was a customer of yours?

A. That is right.

Q. And that you had these conversations with him about the oil companies, is the way you phrased it, putting pressure on him?

A. That is right.

Q. And then a few months later he left the station?

A. That is right.

Q. Did you mean to imply, sir, that he left the station because of dealing with you?

A. I don't believe I said that. I said he left the station.

Q. You did. I am asking now did you mean to leave the impression on this record that his leaving the station had anything to do with his buying tires from you?

A. No, I didn't mean that. But I will say that  
1776 Mr. Zaloudex did tell me that there was an awful lot of pressure on him.

Q. You said that, sir, on your direct examination.

Mr. Kelaher: Let him finish his answer.

Mr. Correa: If your Honor please, I submit this is completely unresponsive to my question. This witness is obviously just busting to get this statement about pressure in. He got it in once, he wants to repeat it now unresponsively and I submit I am entitled to be able to cross-examine him without having the witness acting as an advocate as well as answering questions.

Hearing Examiner Kolb: Let's proceed to the next question.

Mr. Kelaher: I think he should be entitled to finish his answer to the last one.

Mr. Correa: I submit he finished his answer.

Hearing Examiner Kolb: He has finished his answer.

Mr. Correa: He was making a completely unresponsive addendum.

Hearing Examiner Kolb: Let's go ahead.

By Mr. Correa:

Q. Do you know why John Zaloudex did leave his station?

A. I know he had trouble with his health.

Q. You knew he left because of ill health, didn't you?

A. I knew that.

1777 Q. But you didn't mention that on direct examination—since you are so fond of going back and repeating your direct examination—did you?

A. Would you ask that again?

Q. Did you mention on direct examination that Mr. Zaloudex left his station because of his health?

A. No, I didn't mention that.

Q. You were asked some rather general questions by Mr. Kelaher. I wonder if you meant to leave the impression that all Sherwood stations in your territory stocked only Goodyear tires?

A. Yes, I meant that.

Q. Is Randallstown in your territory?

A. Not in mine, No.

Q. Is it in the territory of your company?

A. Well, we can sell there, but I don't solicit any stations in Randallstown.

Q. Are you familiar with the Haight—H-a-i-g-h-t—station in Randallstown?

A. I am not.

Q. Do you know what kind of tires Mr. Haight stocks and sells?

A. No.

Mr. Kelaher: Objection. He said he is not familiar with it.

The Witness: I am not familiar with it. I don't 1778 even know where he is located except presumably in Randallstown.

By Mr. Correa:

Q. You have never seen it. You are not familiar with the ones that don't suit your case. How about Mr. Collins? Do you know of that service station?

A. Mr. Collins? No, I am not familiar with that station.

Q. That is at Belvedere Avenue and Pimlico Road. Is that your territory?

A. It is in my territory; that is right.

Q. So it is in your territory?

A. I don't call on him.

Q. That is a Sherwood, now Sinclair, station? Formerly Sherwood now Sinclair station?

A. I am not familiar with it at all.

Q. You know nothing about that?

A. No.

Q. I suppose your ignorance is unconnected with the fact that he carries Lee tires?

A: I don't think you ought to call it ignorance—

Q. Your lack of knowledge.

A. Put it this way, I am only one human being and I find it is impossible to make more than 12 or 13 calls a day and there are several hundred stations that I could call on a day to have to cover all the stations in the 1779 city. You mentioned three stations because of sickness and—

Mr. Correa: Your Honor, do we have to have a speech each time the witness feels the cross-examination has made a point?

Mr. Kelaher: If we are going to have continued badgering of the witness, I think he is entitled to make speeches.

Mr. Correa: If the witness will answer questions, Counsel, we will have no difficulty with badgering.

By Mr. Correa:

Q. Did you mean by your responses to these somewhat general questions that were asked of you to indicate that all Sinclair stations in your territory which carried tire signs or identification carried only Goodyear?

A. That is right.

Q. Is York Road and Belvedere Avenue within your territory?

A. I do not call on that service station; no, sir.

Q. You know that station?

A. I am at liberty to call on—

Q. Do you know of the station?

A. Do I know of it?

Q. Yes.

A. I am not familiar with it at all.

Q. You know there is a station there?

A. I know there is a station there on that corner.  
1780 I pass by on my travels.

Q. Do you happen to know whether or not it is a Sinclair station at the present time?

A. I really could not. I am not sure whether it is or not. I know that there is a big department store there and there is a service station on the corner. I don't know what station it is.

Q. Have you passed that station from time to time?

A. Yes, I have.

Q. Have you noticed the tire signs displayed in and about that station?

A. No. Not primarily, no.

Q. You say not primarily. Have you ever noticed it?

A. I have never noticed it.

1781 Q. Would you consider the display of Lee Tire signs at a Sinclair station as something rather remarkable and unusual?

A. I definitely would.

Q. And that is the sort of thing you would notice?

A. Yes. If there was primarily one or two in the whole city I think I would notice them.

Q. But you never noticed that in respect to the Sinclair station at the corner of—the northeast corner of York Road and Belvedere?

A. No, sir.

Q. Are you prepared to testify that that station is not marked with Lee signs?

A. I am not.

Q. You can't say it is not, can you? You just didn't happen to see what kind of signs it was marked with.

A. I haven't even—I don't even know what kind of station is there, just a vague remembrance of my mind of passing there several times that there is a service station on that corner. I don't think you could answer what was in front of my house.

Q. This station, sir, at the northeast corner of York Road and Belvedere Avenue is in your territory, I believe you said?



A. If it is in Baltimore I have the right to call on the station.

Mr. Kelaher: Your Honor, I know that counsel 1782 should not be restricted in cross, but I think he has exhausted York Road and Belvedere Avenue by this time.

Mr. Correa: I grant it is a sensitive point with you, with the firm.

Mr. Kelaher: Not with me it isn't.

Mr. Correa: I differ a little as to whether I have exhausted it.

By Mr. Correa:

Q. Let me ask you, sir—

Mr. Kelaher: I object to the question.

Hearing Examiner Kolb: What is the question?

Mr. Correa: The question was purely preliminary. I don't think it is a question, in fact.

Hearing Examiner Kolb: Read the question, whatever is on the record.

(The reporter read the question.)

By Mr. Correa:

Q. Is it in your territory, for sales purposes or not?

A. Yes, it is in my territory.

Q. Is there any other Burke-Savage tire salesman assigned to that particular area?

A. We had, to my recollection, we had a salesman, I believe, that did call on a location there. I am not sure it was on that corner or further up. But he is no longer with the firm.

Q. At the present time—

1783 A. We do not solicit any business, and I am not familiar with that location. I believe we did have a location calling on that account at one time, in that vicinity.

There is a Sinclair station I am more familiar with that

I have stopped in myself, a man named Buckmaster, who could not buy tires from me, and I stopped calling on him; I understand he is not there any more, either.

Q. This is by way of getting away from the station at the northeast corner of York—

A. I am sincerely not familiar with that location.

Q. Is there any particular reason why you have not solicited that particular station?

A. The reason is that there are more stations—I couldn't possibly solicit every one. I have a routine of certain accounts that I have called on for years, and there are other stations further down on York Road, too. There must be a dozen stations, or I would say two dozen stations, from Belvedere down to Cold Spring Lane that I do not call on, either, of various different—

Q. Of various oil companies?

A. That's right.

Q. And those are stations that in the normal course of your activities you just don't have time to get to, is that it?

A. That's right. And that happens to be one of them.

Q. So that when it comes to the matter of soliciting service stations in general, there are within your territory a certain number of stations which you just can't get to because you just have so much time.

A. Well, yes. The prime reason for that right now is that I divert a lot of my attention to commercial and car dealers accounts because I found out it is very tough to sell these service stations.

Q. You referred to Buckmaster. Is that the same Buckmaster as the Buckmaster Shell Service at 2500 Washington Boulevard?

A. I couldn't answer that. I know that I did call on that service station. It is on York Road. I don't know

the exact number. Mr. Buckmaster told me that he could not buy tires from me, he has to stock Goodyear.

Q. Do you know that Buckmaster Shell Service at 2500 Washington Boulevard?

A. I don't call on him. This same salesman, a man named Johnny Wilkins, called on him. Mr. Wilkins is no longer with the firm.

Q. Do you know whether or not the Buckmaster Shell Service switched from Armstrong tires to Goodyear because of a disagreement with your firm?

A. To my knowledge, I know nothing of a disagreement.

Q. You don't know anything of that?

A. Not a disagreement.

Mr. Kelaher: What type station is Buckmaster's?  
1785 Mr. Correa: Buckmaster Shell Service. I would assume that is Shell.

Mr. Kelaher: You mentioned two Buckmasters, as I recall it.

The Witness: Is that the same Buckmaster?

Mr. Correa: The station does business as Buckmaster Shell Service.

Mr. Kelaher: Located where?

Mr. Correa: 2500 Washington Boulevard.

The Witness: I don't believe that is the same Buckmaster in the Sinclair station.

Mr. Correa: The reference, I may say, to the other Buckmaster was brought in by the witness unresponsively on his own. I haven't moved to strike it because—

Mr. Kelaher: Due to the similarity of names I thought you were talking about the same one.

By Mr. Correa:

Q. How about D&L Shell, 6216 Washington Boulevard; do you know that station?

A. Again I don't call on him. This same salesman we had working for us, I believe, did call on that station.

Q. Isn't D&L Shell a customer of yours now?

A. No, he is not a customer of ours now. Neither is Buckmaster Shell.

Q. Where does D&L Shell get the Armstrong tires he sells?

1786 A. I believe he gets them through the Wilkins Tire Company.

Q. That is a competitor of yours?

A. Yes, I guess you can call him a competitor, even though he buys his tires from Burke-Savage, if you want to call him a competitor.

Q. Would you call him a dealer of yours?

A. He is a dealer of ours, yes. Wilkins is, not Buckmaster nor D&L.

Q. That's right. Wilkins sells Armstrong tires to D&L Shell, is that right?

A. Well, I can't answer that because I don't know who Wilkins sells. I don't have a list of his accounts.

Q. I never heard of Wilkins. You told me a moment ago that D&L Shell bought Armstrong tires from Wilkins.

A. He does. But he doesn't buy any more Armstrong tires from us.

Q. Do you know any other place where D&L—

A. He could be buying from Wilkins Tire Company.

Q. Have you ever been in the D&L Shell station?

A. No, I have never.

Q. Have you heard from any of your associates in your business what tires are displayed by D&L Shell?

Mr. Kelaheer: Objection, your Honor.

Hearing Examiner Kolb: Objection overruled.


The Witness: Have I ever heard from any associates?

1787 By Mr. Correa:

Q. Yes.

A. No, I haven't.

Q. Any of your associates?

A. In our own firm? 

Q. Or your dealers.

A. I already said, we did sell D&L Armstrong tires, previously sold him. But we do not today.

Q. Do you know whether or not D&L Shell displays Armstrong tires?

A. Do I actually know? No.

Q. What qualification is in your mind when you say "Do I actually know"?

A. I have never seen or been in the station myself. I am not even positive of the location. I believe it is somewhere in West Baltimore.

Q. How about Middlesex Shell Service, Eastern and Essex?

A. I do not call on that station myself. I do not call on the account. And to my knowledge, Burke-Savage—I see tickets written up—Burke-Savage sells mostly used tires to Middlesex. I have seen numerous tickets to Middlesex. They have all been used tires.

Q. Do you know what—

A. I don't even recollect seeing any new tires.

Q. Do you know what brand of tires Middlesex handles?

1788 A. No, I don't.

Q. Do you know that Middlesex handles, among others, General tires?

A. No, because I don't call on the station.

Q. That is another station you don't call on?

A. General just recently set up a company store within a few blocks of Middlesex. It is possible because of dealer convenience that he is dealing there.

Q. Do you mount truck tires for dealers who buy them?

A. Do we? Yes, we do.

Q. Are you in the recapping business, also?

A. Yes, we are.

1789 Q. Do you do recapping with service station dealers?

A. Yes, we do.

Q. Who is your principal competitor in the recapping business in Baltimore?

A. Well, now, recapping is a different basis than new tires. We have many more competitors in recapping than we do in new tires through service stations.

Q. Could you please now—

A. Who is my principal competitor?

Q. Let's get down to my question.

A. Is that plural? Competitors?

Mr. Correa: Read the question, please, Mr. Reporter, and see if the witness can answer.

(Question read.)

The Witness: Unless you can be more specific—is that in service stations, or commercial accounts? It is a pretty tough thing. In other words, there are several. Car dealers are you talking about or what?

By Mr. Correa:

Q. Let's say in service stations.

A. Who is my principal competitor?

Q. In recapping.

A. Suppose I have three competitors who are all selling the same amount. Who would be the principal one?

Q. Name the three if it is three and let's stop  
1790 fencing if you please.

A. I am not trying to fence. If you would only have made it plural, I think I could have answered it.

Q. If it is three, name three, and if it is a dozen, name a dozen.



A. Brooks-Huff is a principal competitor of mine; C. D. Erdman is a principal competitor of mine and Frank Jacobs Tire Company is also a principal competitor of mine.

Q. How about Armor Tread?

A. Armor Tread is also a principal competitor. There are several. It is hard to name one.

Q. You spoke of handling accessories, Mr. Witness. Is that the U. S. line of accessories?

A. We handle quite a few U. S. line of accessories. We handle the U. S. fanbelt and we handle spark plugs that we purchase through United States Rubber Company, etc.

Q. Did U. S. Rubber Company cut down or eliminate its accessories lines in recent years?

A. Nationally? Are you talking of nationally or Baltimore?

Q. Nationally?

A. I have no real—I wouldn't be able to answer that. I don't know the United States Rubber Company's statistics or figures on accessories.

Q. You don't know whether they have cut down on their accessories line.

1791 A. I wouldn't know. I honestly couldn't answer that.

Q. You mentioned Steve's Shell Station?

A. That's right.

Q. Isn't it a fact, sir, that that is an owned station and not a leased station?

A. Is it owned today? Or was it owned at the time that Steve—

Q. Isn't it a fact that both are?

A. Was it ever leased?

Q. According to my information, no.

A. The only thing I can tell you is that the dealer there at that time left me under the impression that he had leased the station.

Q. You said that the operator of that station was removed within a few months after he stopped handling Goodyear tires?

A. He stopped buying tires from Burke-Savage and in a short while he left the station; that's right.

Q. As I understood your direct testimony—and I made a note of it—

A. Go ahead.

Q. —you said that Steve's Shell Station stopped handling Goodyear tires, and within a few months he was removed?

A. That's right.

Q. What was it? Did he stop buying from you or did he stop handling Goodyear tires?

1792 A. Well, when I first started calling on him, he had other brand tires there, and then he started buying tires from Burke-Savage. Then, within a few months he was removed from the station.

Mr. Correa: Please read the answer.

(Answer read.)

By Mr. Correa:

Q. When you say "other brand tires," what do you mean?

A. At that time I believe they were Goodyear tires. You have to remember that that station goes back pretty far.

Q. I am just trying to get your recollection.

A. In some of these instances I can remember extremely clearly what happened. It seems like these are the ones that you haven't brought out. Other ones, of course, are a little more vague.

Q. Having unburdened yourself of that, will you now tell me what your best recollection is as to what other tires Steve's Shell Station was handling?

A. I recollect they were Goodyear tires.

Q. That is your best recollection?

A. Yes, sir.

Q. I gathered from your previous answer you are not entirely certain about that?

A. Because of the time lapse, no.

Q. You say that you then began to sell him tires?

1793 A. That's right.

Q. And what tires did you sell him?

A. I sold him U. S. Royal tires.

Q. Then, you said within a few months, you next said he stopped handling Goodyear tires?

A. Well, he was buying all his tires from Burke-Savage. So, he stopped handling. He evidently did if he was giving us all his business. I don't see how he can continue.

Q. Are you finished?

A. Yes.

Q. Then, you said that within a few months he was removed.

A. That's right.

Q. Did you mean to imply by that that he had a lease and the lease was cancelled?

A. No, I didn't. I just said that he was removed. I didn't imply anything.

Q. Would that include his going away because he decided to go into some different business?

Mr. Kelaher: Objection, your Honor. He has answered the question.

Hearing Examiner Kolb: Overruled.

The Witness: You are asking for the personal life of these people.

By Mr. Correa:

Q. I want to know what you meant by the expression that he was removed?

1794 A. That's right; he was removed to my knowledge

because he called me up sort of frantically and told me that he has to get out of the station.

Q. You didn't tell us this on direct, did you?

A. That goes along with my testimony, that he was evidently removed from the station.

Q. You said on direct, Mr. Witness, that within a few months he was removed?

A. That's right.

Q. Then, you said the operator said he had jeopardized his lease by handling your products, in a conversation?

A. Did I say it on that particular account?

Q. Yes, you did.

Mr. Kelaher: I would like to have the record read back as to that particular account. I am not quite sure just who he said that with reference to.

Mr. Correa: I can rely on my notes. And my associate's note is the same. I see counsel for Mr. McMaster consulting his notes—

Mr. Kelaher: I object to that. And I ask that that remark be stricken from the record. I would like to make a statement right here and now.

We want no implications in this record that we are associating in any way, shape, or form for purposes 1795 of this case. I think we are perfectly competent to handle this case ourselves. If other individuals see fit to file law suits against these respondents, it is no concern of ours. And I don't want any implications in the record, and I am going to resent every time that counsel brings it up.

Mr. Correa: May I say, if your Honor please, quite seriously, that the facts in respect of the matter to which counsel has just addressed himself, are on the record, and they speak for themselves, and I will rest on them.

Hearing Examiner Kolb: We are not trying this case before a jury, so let's go ahead.

They might be good jury tactics but that is about all.

The Witness: May I say something?

Hearing Examiner Kolb: No, don't volunteer anything. Just answer the questions.

Mr. Correa: I have no further question at this time. And I say at this time because I may conceivably have one or two additional with respect to which I don't have the information at the moment. Presumably, it would be at the end of Mr. Thompson's cross-examination.

Mr. Thompson: If your Honor please; I shall not be able to finish in ten minutes. Do you want to adjourn now and start after lunch?

Hearing Examiner Kolb: How long would it take?  
1796 I would like to get this witness out if we could.

Mr. Thompson: I have a number of questions to ask this witness.

Hearing Examiner Kolb: Let's go along and see how far we get.

Mr. Thompson: It might be quicker if I could organize my topics, but I will do as you like.

Hearing Examiner Kolb: We will adjourn until 1:30.

(Whereupon, at 12:22 p.m., the hearing was adjourned to reconvene at 1:30 p.m.)

1797

Afternoon Session.

(1:40 P. M.)

Hearing Examiner Kolb: You may proceed.

Thereupon, EUGENE SAVAGE resumed the stand as a witness for the Commission and, previously having been duly sworn, was further examined and testified as follows:

*Cross-Examination (Resumed) by Mr. Thompson.*

Q. Mr. Savage, did I correctly understand you this morning to say that you had very few competitors in your sales territory?

A. Well, can you be more specific? Again I ask you, are you talking about service stations? And any particular type of service station?

Q. Let's confine the question primarily to service stations. Do you have very few competitors in your efforts to sell service stations?

A. That is right.

Q. Very few. Is the Norris Company one of your competitors?

A. Norris? Are you talking about tires, of course?

Q. I am not talking about tires, of course, at all.

A. As I stated before, we are out of the accessories business now.

1798 I would say that Norris is not a competitor of mine on tires.

Q. How about batteries?

A. In batteries, I would say they are a major competitor.

Q. When you were selling accessories for some years after you decided actively to drop the business but were



selling out of stock, was Norris one of your accessories competitors?

A. Yes, he was.

Q. You know the company, of course?

A. R. W. Norris, isn't it? Is that the one you are referring to?

Q. R. W. Norris.

A. Yes.

Q. Were you present yesterday when Mr. Norris testified?

A. No, I wasn't.

Mr. Kelaher: All witnesses had been excluded except one in response to Mr. Correa's request.

By Mr. Thompson:

Q. Would it refresh your recollection about the number of people engaged in the tire, battery, and accessories wholesale business in selling to service stations if I suggested to you that there are more than 60 such concerns based on the testimony of Mr. Norris?

A. Selling—

Q. Selling TBA to service stations.

1799 A. Are you talking primarily from any one service station, or are you getting into the category of Cities Service stations?

Q. I am talking about—

A. In other words, if I call on a Betholine service station, my only real competitor is Brooks-Huff. I don't see the Atlas supply house selling—

Q. If you call on an Atlas station, your only competitor is who?

A. Firestone. Not my only competitor but my major competitor. There are other tire companies that fringe into business but aren't large competitors.

Q. Do you regard the Loock Company as one of your competitors?

A. In tires; no, sir.

Q. They don't make any efforts to sell tires to service stations, is that correct?

A. I wouldn't say that they don't make any effort.  
1800 I don't even know what kind of tires they handle.

There are several types of tires that I have seen around, that I call off-brand tires, that are handled through some of these jobbers. I am not sure which type of tire Norris handles. They aren't that much of a competitor.

Q. Your sales territory is what I think you referred to as the greater Baltimore area?

A. That is right.

Q. Would that be roughly Baltimore and say a radius of roughly 20 miles or something like that?

A. Approximately.

Q. In that area you offer U. S. Royal tires and Armstrong tires, am I correct?

A. That is right.

Q. Aren't the Dunlop tires also sold in that area?

A. To a small degree.

Q. How about Fisk?

A. I see some Fisk tires but I wouldn't consider them a major competitor in the service stations that I mentioned.

Q. How about Gillette?

A. I see some Gillette.

Q. And you of course see a lot of Goodrich?

A. Goodrich is a major competitor, yes.

Q. And of course Goodyear is a major competitor?

A. And Goodyear, and also Firestone.

1801 Q. And Hood?

A. Very—I don't even remember seeing any Hood tires in any service stations.

Q. Kelly-Springfield?

A. In these stations, I havn't seen any Kelly's, either. I see some Kelly-Springfield in some Sunoco stations. If you would be more specific, for instance, when I call on, say, a Texaco station, I would say that my major competitor is Firestone and Goodrich. And that would constitute possibly 80 to 90 percent of competition I receive in that particular service station.

Q. Aren't there a number of wholesalers in the Baltimore, Greater Baltimore area, selling Lee tires?

A. Selling Lee tires?

Q. Yes.

A. The only one that I know is the company store itself. I don't know of any other large Lee dealers that sell service stations.

Q. You never heard of the Hillen Tire Company?

A. I have heard of the Hillen Tire Company. I know Mr. Schnitzer and most of his business is commercial business, not service station business. Mr. Joseph Schnitzer I saw a couple of weeks ago and told me it is so small it isn't even worth talking about.

Q. So they don't try to sell service stations?

A. No, they don't—

1802 Q. Do any of these companies that you mentioned make any efforts to sell service stations, outside of Firestone and Goodyear?

A. I would say they make some effort, yes.

Q. How about Mansfield? Isn't that a rather well-known name in Baltimore?

A. Again, I say I can't even remember seeing a Mansfield tire in any one of these service stations that I call on.

Q. Perhaps at a later point I shall have occasion to try to refresh your recollection. In the meantime, is the McCreery tire sold in the Greater Baltimore area?

A. In service stations?

Q. Yes.

A. Not to my knowledge.

Q. Never see it there?

A. Not in service stations.

Q. How about Michelin?

A. I have never seen a Michelin tire in any service station at any time in the last twelve years.

Q. How about the Miller tire? Is that a local tire sold in Baltimore?

A. I don't know if it is local or not. I believe there are some Miller tires sold in Baltimore. I know of one retailer that handles Miller tires. Again I have never seen a Miller tire in any service stations.

1803 Q. They don't try to sell service stations?

A. Not to my knowledge.

Q. How about Schenuit, is that a Baltimore company?

A. Schenuit is a Baltimore company. Schenuit is probably a little more prominent than all these other off-brands that you mentioned in service stations.

Q. Do you regard Lee as one of your off-brand tires to which you referred?

A. Well, it is terminology. Anything which is not original equipment I sort of refer to as "off brand" tires.

Q. What are the original equipment tires to which you refer?

A. U. S. Royal, Goodyear, Firestone, Goodrich, and General are original equipment tires.

Q. What do you mean by original equipment?

A. Original equipment are tires that are equipped on new automobiles.

Q. And therefore more readily sold as replacement tires?

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: Overruled.

The Witness: I can answer that. Armstrong is not an original equipment tire, and yet we—

By Mr. Thompson:

Q. Are the original equipment tires more easily salable as replacement tires?

Mr. Kelaher: He is trying to answer the question, 1804 I think.

Hearing Examiner Kolb: Read the question.

(Question read.)

A. I would say yes.

By Mr. Thompson:

Q. How about Seiberling line, isn't that sold around Baltimore?

A. Yes, it is.

Q. And you are not by any means the only U. S. Royal distributor, are you?

A. No. There is one other distributor.

Q. Who is that?

A. C. E. Kimmel.

Q. Do you regard Kimmel as one of your competitors?

A. Not through service stations.

Q. Not through service stations?

A. Not through service stations.

Q. Perhaps we will have a chance to refresh your recollection at a later point.

Are there not many, many brands of batteries sold to service stations in the Greater Baltimore area?

A. Are there many brands of batteries?

Q. Yes.

A. Yes, there are.

Q. Would twenty be a pretty good guess?

1805 A. I would say so.

Q. Mr. Savage, when you come to accessories—and I understand, of course, that you are now out of the accessories business—I also understood you to testify that after 1951 you spent several years disposing of stock, is that correct?

A. That is right.

Q. Are there not just innumerable brands of accessories which are sold to service stations by a very large number of wholesalers?

A. Well—

Mr. Kelaher: Object unless the questioning is more specific, your Honor.

Hearing Examiner Kolb: Overruled.

A. I would say yes.

By Mr. Thompson:

Q. If I correctly understood you this morning, you said you had diverted your attention to commercial and car dealer accounts?

A. That is right.

Q. But you still solicit and sell service stations?

A. Well, I solicit more service stations that own their own property and are independent, do not lease their stations.

Q. So that by and large your service station activity is confined to service stations which are not leased stations?

1806 A. That is right.

Q. That interests me very much, and I will come back to that in a moment, if I may.

What percentage of your time do you spend on commercial accounts as against car dealers and service stations?

A. It is divided about in three parts.

Q. Divided in three parts?

A. I think that is fair.

Q. So that you spend about a third of your time on the service station accounts?

A. That is right.

Q. Are you familiar with the survey of service stations



which, was published and widely circulated, made by the Baltimore News-Post?

A. No, I am not.

Q. How many service stations would you estimate there are in the Greater Baltimore area, and by that I mean Baltimore and within a radius of about twenty miles?

A. How many service stations?

Q. Yes. I am talking of service stations now. I don't mean just pumps, and I don't mean garages. I mean real service stations.

A. It would be a sort of a wild guess.

Q. May I suggest to you that the survey—and ask you whether this would refresh your recollection or aid 1807 you—that the survey says there are 1,180 in that area?

Mr. Kelaher: May I ask when the survey was made? We have no identification of the survey. The Baltimore News-Post has been in business for many years.

Mr. Thompson: I am not testifying. I would be glad to put it on the record if anybody is interested.

Mr. Kelaher: In fairness to the witness—

Hearing Examiner Kolb: The witness has answered it. Let's go ahead.

By Mr. Thompson:

Q. You said you would guess that is about right?

A. I will accept your figures.

Q. Of those roughly 1100 or 1200 stations, upon how many do you call? How many do you solicit?

A. Now?

Q. Yes.

A. About 130.

Q. I beg your pardon?

A. About 130; possibly 150.

Q. 130 to 150?

A. That is right.

1828 ROLLAND C. BEST was called as a witness for the Commission and, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Kaplan.*

Q. Would you state your name and home address, please?

A. I am Rolland C. Best. I live at 102 Shetland Hills Drive, Lutherville, Maryland.

Q. Mr. Best, are you associated with the Best Battery Company, Inc.?

A. I am president and treasurer.

Q. And how long have you been operating under the name Best Battery Company?

A. We were incorporated on November 1, 1953.

Q. And had you been operating under any other name prior to that time?

A. Yes. Prior to that time, for a period of about four months, we had a partnership going under the name of B&G Battery Company.

Q. And have you been known under any other name other than B&G and Best?

A. When we originally went into the battery business we were known as the Dev-i-Co Battery Company.

Q. What year did that begin, sir?

A. That was from May of 1951 until October of 1952. I believe that is right.

Q. Are you the sole stock owner of the Best Battery Company, Inc.?

A. The stock is owned jointly by my wife and myself.

Q. What product or products does your company sell?

A. We sell nothing but batteries. Lead-acid batteries.

Q. Does that include both wet and dry-charge?

A. Both.

Q. Do you manufacture these batteries?

A. No. These batteries are manufactured for me under contract, on an annual renewal basis.

Q. What company does that manufacturing for you?

A. At the present time they are manufactured by Scranton Battery Company, in Archbold, Pennsylvania.

Q. And prior to this company?

A. Price Battery Company, Hamburg, Pennsylvania.

Q. About how long have you been in business now, sir?

A. Since May 1951, in the battery business.

Q. And what territory does your company cover in its operations?

A. We have the entire United States, but we limit ourselves to an area within twenty miles from our shop.

1830-1839 Q. How many salesmen does your company employ?

A. One.

Q. Is that yourself or in addition?

A. In addition.

Q. How many trucks does your company operate?

A. Three, and a station wagon which I use.

Q. Mr. Best, are there any Atlantic service stations in your territory?

A. A considerable number.

Q. Could you approximate the number at all?

A. I have never gotten statistics on them, but I know that there are quite a few of all kinds. I wouldn't have any idea as to the number.

Q. Are there any Shell service stations in your territory?

A. Yes, there are.

Q. Could you approximate the number of those?

A. No, sir.

Q. And how about Sinclair service stations?

A. There are some of those, also.

Q. Are you able to offer any number of those?

A. No, sir.

Mr. Correa: What was the last question?

(The reporter read the question.)

Mr. Kaplan: Any approximate number of those.

1840 By Mr. Kaplan:

Q. Mr. Best, do you have any competitors in your territory as far as the sale of batteries is concerned?

A. Yes. We have Willard, Autolite, Exide, Bowers, Delco. Probably Bowers is the one most nearly like ourselves who sell direct, who compete on city and state contracts and things of that nature.

Q. These are all manufacture outlets?

A. Bowers is a manufacture. I think Bowers is the only manufacturers' branch in Baltimore. The rest of them are distributors or jobbers.

Q. Do you have any other jobbers as competitors in your product?

A. Other jobbers? Well, every auto supply house is a competitor. Every tire dealer is a competitor. That is, a tire distributor is a competitor because they all handle batteries as a sideline.

1842 Q. Mr. Best, let me rephrase the question. And confine your answer prior to January 1, 1956.

Were you in competition in the battery field with suppliers to Sinclair stations?

A. Yes.

Q. How does your price compare?

A. Naturally being on a lead basis, which I believe is the same basis on which most manufacturers buy their batteries, we are in position naturally with our limited advertising to offer a higher quality product at a lower price.

Q. It is a higher quality product?

A. I believe so.

Q. How does your service compare to these competitors?

A. We pride ourselves on the fact that you call us within an hour and we will have your battery. That is why we confine ourselves to an area within twenty miles of the shop.

1845 Q. Have you ever sold on a stocking basis up to January 1, 1956, Sherwood stations?

A. Yes, I have. Those were not company owned, like Roy's Auto. I stocked him up to the hilt. That is at 3023 Hamilton Avenue. He stocks my batteries and has for quite a period of time. But he sells gasoline and oil but he owns his own building although I understand Sinclair or Sherwood loaned him the money to buy it. But he is still not obligated to stock their products, so he stocks my batteries.

Q. Have you stocked any Sherwood lessee stations?

A. The only one I put a stock in was Russ Cowley's, and I kept it in there for about a month and Russ was so unhappy with it I took it out. That is Seven Mile Lane and Reisterstown Road.

Q. When did you put that stock in?

A. A couple of years ago this fall, I guess.

Q. You say you were only in for a month?

A. Possibly six weeks. It was a very short period of time.

Mr. Correa: May I have that last question and answer?  
(The question and answer were read by the reporter.)

By Mr. Kaplan:

Q. You say you stocked him regularly for approximately six weeks?

A. Yes. We have stands, of course, with—I am laugh-

ing because that is a sore spot with me—I invested in some stands and had my name put on them, lithograph, and they were beautiful things.

I brought one out there, and I proceeded to put eight or ten batteries on it, and there they were, and of course next to them were competitive brand batteries. Frankly, I did pretty good for the time I was in there, but that is about the story.

Q. Did you remove these stands voluntarily?

A. I certainly did.

Q. You did?

1847 A. Yes, sir.

Q. Why?

A. Well I don't know quite how to put this. Let's say that it was my better judgment to take them out.

Q. Can I go into that further, sir?

A. Yes, if you care to. I could see, by talking—of course, at that time I lived in the vicinity of this particular gas station, Mr. Cowley's gas station, and on my way home in the evening I would invariably stop in a couple or three times a week and buy gasoline from him.

Of course, I have a Sinclair credit card and do business with them all the time. And I could see that Russ, who was also a friend of mine, was very unhappy with the situation.

By Mr. Kaplan:

Q. Did you have any specific conversation with Mr. Cowley over this matter, over moving the stand?

A. You mean what he said to me and what I said 1848 to him and what not?

Q. That is correct.

A. Well, yes. Russ first claimed that a Sinclair representative or Sherwood man, I guess it was, came in there



and said, "What are you doing with those things there? Don't you know that those are nothing but rebuilt batteries in new cases?"

And I told him, "Why, Russ, anybody in their right mind, this is an insult to your intelligence." And I went on to do a reverse sales talk on the man and I told him how assinine it was for anybody to even make the statement in the first place, and secondly he went ahead to say that the same man was in that day and of course when he stocked my batteries he naturally let his other stock of batteries get depleted, and his stand was sitting there, stock naked, so to speak, without a battery on it. And I guess it must have been very aggravating to a little TBA man coming in the station.

So the next thing I knew, Russ had a full stock of batteries.

Q. What type batteries?

A. Goodyear, dry-charge. And I proceeded to take my batteries out.

1849 Q. Mr. Best, you said that you had a salesman in your employ now, is that correct?

A. Yes, sir; since February 4, 1957.

Q. Had you had any salesman in your employ prior to that time?

A. Oh, yes. I once made an effort—I learned early in life in this business if I wanted to survive and feed my family I had to forget about gas stations and go out and make a living for myself, which I have done. I always had in mind that there is a tremendous amount of business out there, so why can't you get it. So I made a concentrated effort. I hired a fellow who worked for eight years for the Bowers Battery Company out in some little territory in back of where the old ferry used to cross to go to Atlantic City. He had that entire area back there—New Jersey, and part of Delaware—and he worked off a truck.

He came to me and said: "Look, I have been out of this business for five years but I did do a wagon job for Bowers and I did a good job."

So I proceeded to call up the vice president of Bowers, whom I know very well, and asked him about the man and the man said, "Yes, he did a good job for us and I would like to hire him, if we could, if we had an opening for him or if he wanted to come back to work for us."

On that basis I took the man on and supplied him with a truck and said, "Look, dad, all you have to do is 1850 get out there, call on gasoline stations, automobile repair shops, used car dealers and boys of that nature." And I said, "With the experience that you say you had, and as good a man as you tell me you are, we shouldn't have any problem, with as good a battery as I am going to give you to sell." So he went out there—

Q. When was this?

A. This was in September 1955, that I put him on.

Q. What was the man's name?

A. His last name is Baughner. His first name I think is Frank. I don't even remember that. I have a record of it here. It is Bill.

Q. Go ahead.

A. I kept a record of what the man did. Of course this is—I wanted first of all to see what he did do because he came to me so highly recommended that I wanted to meet a good salesman for a change.

And secondly, I figured that if I was losing money on this bird I wanted to know it right quick, which is exactly what happened. Here is his volume of sales for September. I paid him an advance of \$300 a month. My gross profit in the month of September was \$231.33. So I had a loss of \$68.07, on salary, plus my truck expense, plus maybe a few other things which we won't go into.

In October I have his entire record here. In October 1951 I have his entire record here. In October his gross sales for the entire month were \$1,457.30. His total sales for September and October then equalled \$2,497.63. My gross profit in the month of October was \$388.46. That was gross. I advanced him \$300 again plus truck expense.

In the month of November he dropped back a little bit. No, he didn't, either. In the month of November he did \$1,751.82, which is traditionally one of the best months in the battery business. He did \$1,751.82. I advanced him \$300 again. I don't think I even bothered to take a gross profit that month to see how I came out. I think I made up my mind to let him go.

In the month of December, which was his last month, his sales were \$1,381.59, net. I advanced him \$375 because of Christmas and I had a loss of \$7.74 plus truck expense. So here is the whole result of a man who spent eight years in the business calling on TBA accounts.

1852 Q. Did your man call on Shell and Sherwood stations, Mr. Best?

A. I believe he did. I have here these pink copies of the salesman's copies of my autographic register. And in here you will find an assortment of Sinclair, Sunoco . . . Shell, gasolines, used car dealers. This is as they came out. These will probably tally with the ones on front. At least they should.

Q. Were these large purchases?

A. No.

Here is the record. These are all the sales he made. He made a good many sales but there isn't any money in it.

Mr. Kaplan: Your Honor, I would like to have these records marked for identification.

(The documents referred to were marked Commission Exhibits 342-A to Z-1, 343-A to Z-40, 344-A to Z-62, and 345-A to Z-55 for identification.)

By Mr. Kaplan:

Q. Mr. Best, did you receive any reports from your salesman as to why he was experiencing so much difficulty selling service stations, and in particular • • • Shell, and Sherwood?

Mr. Correa: I suggest that the answer to that question be Yes or No, because I apprehend there may be an objection to the next one.

1853 Hearing Examiner Kolb: Answer Yes or No.

A. Yes.

By Mr. Kaplan:

Q. Mr. Best, how frequently did you see your salesman in the course of his employment?

A. You mean Mr. Baughner or Mr. Grace?

Q. Mr. Baughner.

A. Mr. Baughner I saw every night.

Q. Did you discuss the day's business with him at that time?

A. Very definitely.

1854 By Mr. Kaplan:

Q. You presently have another man in your employment, is that correct?

A. I do.

Q. What are his duties?

A. He is—I supply him with a Courier, a Ford Courier. He is a truck salesman. He doesn't like that, but that is what he is, a truck salesman.

Q. Does he call on • • • Shell, or Sherwood stations?

A. In the course of his rounds as he is going around, if there is a station in the immediate area where he is, he will drop in.

Q. Has he had any success in selling these specific accounts, these specifically named stations?

A. No more than my other boy had.

Mr. Kaplan: No further questions, your Honor.

*Cross-Examination by Mr. Correa.*

Q. Mr. Best, in the year 1956 did the annual volume, dollar volume of your business, increase substantially over the preceding year?

A. In 1956? Not substantially; about 12 percent.

Q. It did increase?

A. 1957 increased again.

Mr. Kaplan: Your Honor, I object to the question. We did not go into the volume of business of Mr. Best's company.

1856 Hearing Examiner Kolb: I will overrule the objection.

By Mr. Correa:

Q. What was your annual volume in the year 1955?

A. 1955?

Q. Yes.

A. I wish I had my accountant. Say \$125,000.

Q. And it increased?

A. 1956 it went up to \$138,000 or \$140,000. In 1957 it is around \$180,000 to \$200,000.

Q. Or at the rate of?

A. My fiscal year ended in October. Calendar year it will go over 200.

Q. By the way, at the time you put batteries in Russ Cowley's station, did you at that time have a dry-charge battery?

A. I don't believe I did.

Q. Something you said suggested that maybe you did.

A. They were available to me. Let me put it that way. But whether or not I put any in there I can't say. I probably had some in the shop. But whether I put in any with Russ I can't answer Yes or No. I will qualify that further by stating that they have been available to me since—at that time Price was my supplier, and I know they were making them for, say Firestone, for instance, or Atlas, 1857 and they also were available to me through the same channels.

Q. Do you mean from Price?

A. From Price, at additional cost.

Q. You ascribed the fact that you were able to sell your batteries at a lower price than some of the companies you mentioned as your competitors, as battery manufacturers you mentioned—because of your limited advertising, is that correct?

A. Well, limited advertising would be one factor. Perhaps lower mark-up would be another.

Q. When you speak of advertising, were you referring to the fact that such companies as Willard, Auto-Lite, and Exide have nationally advertised brand names?

A. And Delco.

Q. And Goodyear?

A. Goodyear. Goodyear you see very little advertising of batteries. I only see tires. But Delco is I believe the biggest advertiser of batteries at the present time.

Q. The name Goodyear is a nationally advertised name as a name?

A. As a name, oh, definitely; very definitely.

Mr. Correa: I have nothing further.

By Mr. Ballard:



1858 Q. You have one salesman, is that correct?

A. That is correct.

Q. I am speaking currently.

A. Currently, yes.

Q. I take it that salesman also does not call regularly on service stations?

A. He is getting educated.

Q. You say he doesn't call on Atlantic service stations?

A. I wouldn't say he doesn't call.

Q. Do you know who he does call on?

A. Oh, yes. He calls on Atlantic, Sinclair, Shell, Esso. He calls on everybody. One of the ways that you can best train a man in this business is to have him call on gasoline stations, because there he is really brushing up on his sales talk, because he will get all kinds of replies and he can really get to know the answers to them.

Q. He will get a lot of brush-offs?

A. He will get brush-offs.

1859 Mr. Ballard: No further questions.

*Redirect Examination by Mr. Kaplan.*

Q. Mr. Best, we missed one question about Mr. Baugher before. What was his sales territory?

A. Well, he left here and he traveled on Route 40 as far as Mountain Road—

Q. Would you say—

A. Metropolitan Baltimore. An area within Bel Air, possibly, and as far north as Aberdeen, and maybe out Washington Boulevard to Southwestern Boulevard and through Arbutus and throughout there, and up through Towson.

Q. And Mr. Correa asked you with reference to the volume of business you have done in the last three years,

and each year you indicated an increase in that volume. Would you say that any substantial amount of that increase has been due to an increase in service station business?

A. Definitely not.

Mr. Kaplan: Your Honor, at this time we do not choose to enter into evidence Exhibits 341 through 343, and would like to have the witness retain them and have them 1860 available for examination.

Mr. Correa: By both sides.

Hearing Examiner Kolb: Is that all that you have of this witness?

Mr. Kaplan: Yes, sir; that is correct.

(Witness excused.)

Hearing Examiner Kolb: The testimony of this witness with reference to oil companies other than Atlantic will be received, subject to a motion to strike by Atlantic.

Mr. Correa: May the testimony to the extent that it is with reference to Atlantic-Firestone relations be received subject to a motion to strike by Goodyear?

Hearing Examiner Kolb: It will be so received, but I don't think there was any.

We will take a short recess.

(A short recess was taken.)

1861 • Hearing Examiner Kolb: The hearing will be in order.

Whereupon, ELMER LANG was called as a witness and, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Kelaher.*

Q: Will you please state your name and home address?

A. Elmer Lang, 500 East Fourteenth Street, Baltimore.

Q: Are you an employee of the R. J. Loock Company, Mr. Lang?

A. That is correct.

Q. And how long have you been employed by that company?

A. Sixteen years.

Q. What is your position with the R. J. Loock Company?

A. I am an outside salesman.

Q. How many years have you been an outside salesman?

A. Nine years.

Q. So, that would put you back to 1948 to date that you have been an outside salesman?

A. Yes.

Q. What class of products are sold by R. J. Loock Company?

A. Well, we handle the general TBA line, which would be tires, batteries, chemicals, accessories.

Q. Would you name the principal brand names?

A. We have Mansfield tires, Autolite batteries, 1862 DuPont chemicals, Gates fan belts and radiator hose, Fram oil filters, and recently added Purolators.

Q. When did you add Purolator oil filters?

A. Back in 1956.

1869 Q. Approximately how many Shell service stations are in your marketing area?

A. I would say probably in my particular area about ten or twelve.

Q. How many Shell service stations have you solicited during your years as a salesman, beginning in 1949, was it?

A. Well, it would be hard to arrive at an exact figure.

I would say offhand over the period of eight or nine 1870 years I guess I have called on some 12 or 15 Shell stations.

Q. What has been your—

Mr. Correa: Did I misunderstand the previous answer? I thought you said there were ten or twelve in your area?  
The Witness: That's right.

By Mr. Kelaher:

Q. What has been your experience in selling TBA to Shell service stations?

A. I have had no success whatsoever.

Q. Do you presently call on Shell accounts?

A. I have none whatsoever.

Q. What TBA items did you notice in Shell stations during this eight or nine year period?

A. What little contact I had, they seemed to be split up amongst Firestone and Goodyear.

Q. What type identification would you find on Shell service stations?

A. It would vary. It would be either Firestone or Goodyear.

Q. Approximately, how many Sinclair service stations are in your marketing area?

A. I would say roughly about 18 or 20.

Q. Of this number approximately how many have you solicited during the course of your eight or nine years?

Mr. Correa: I object if you are asking about solicitation of Sinclair stations prior to January 1, 1956.

1871 Mr. Kelaher: As a general statement, I think he can tell what his experience has been.

Hearing Examiner Kolb: Let's try calling it Sherwood instead of Sinclair. It might make a better record.

By Mr. Kelaher:

Q. When you first began as a salesman for R. J. Loock, approximately how many Sherwood service stations did you call on?

A. I suppose I would cover about a dozen, I would venture to say.

Q. How many do you presently call on?

A. I have about six now that I would say are really active accounts.

Q. What has been your experience in selling accessories to such stations?

A. Up until 1956 we did a very good job with Sherwood at that time, which is now Sinclair. Most of the fellows in our company considered Sinclair stations one of our best outlets. But in 1956 the picture changed and I would say at the present time we do very little.

Q. During the period 1948 or '49 until 1955, what was your experience in selling batteries to Sherwood stations?

A. We had never been too successful on our battery line with Sinclair or Sherwood.

Q. Who is the principal supplier of TBA to Sinclair service stations?

1872 A. Brooks-Huff.

Mr. Correa: Just a moment. On that last question, did you say principal supplier of TBA to Sinclair stations?

By Mr. Kelaher:

Q. Let's say of Sherwood stations until 1955, and from then on the Sinclair name?

A. It would be Sinclair.

Q. Who was the principal supplier to the Sherwood stations during the period 1949 through 1955?

A. Brooks-Huff to my knowledge.

Q. Who was the supplier of the Sinclair stations from January 1, 1956 to date?

Mr. Correa: Is this limited to accessories?

Mr. Kelaher: Yes.

The Witness: Brooks-Huff.



By Mr. Kelaher:

Q. And did you at one time solicit the accessory business of Ridgley's Sinclair, 5772 Falls Road, Baltimore?

A. Yes, I did.

Q. What has been your experience in selling to this account?

A. Well, we were very successful with Mr. Ridgley up until 1956.

1873 Q. What products were you selling him?

A. We were selling him mostly his chemical line, which he was dividing his purchases with Brooks-Huff and R. J. Loock and Company. It so happens that Brooks-Huff carries the same line of chemicals that we do.

Q. What brand is that?

A. DuPont, Simoniz, Johnson's.

Q. Were you selling oil filters at all, stocking him?

A. We were selling Mr. Ridgley Fram oil filters.

Q. On a stocking basis?

A. Stocking basis. Absolutely 100 percent.

Q. So he was a good account apparently?

A. We classed him as one, yes.

Q. Do you still sell to this account on a stocking basis?

A. We don't sell this account Fram any more.

Q. What is your reason for—did you have any conversations with the operator of Ridgley's Sinclair concerning Fram oil filters?

A. Well, in discussing the oil filter situation with Mr. Ridgley—

Q. About when did this conversation take place?

A. This occurred in the early part of 1956. Mr. Ridgley told me that he was going to stay with Fram. We had on one occasion had fan belts and radiator hose as stocking dealers in his place.

1874 In 1956 that line was changed over to Goodyear. And Mr. Ridgley at that time told me that he had



to make the change on account of his oil company's tie-in with Brooks-Huff. But he was going to stick with Fram oil filters as long as he could.

Q. And did he continue to buy Fram?

A. He continued to buy Fram from us because Brooks-Huff does not carry Fram oil filters.

Then, about the middle of 1956, I went in one day and all the Fram filters were gone and he had a complete stock of Purolator.

Q. Who supplied him with the Purolator filters?

A. Brooks-Huff.

Q. What happened to the Fram oil filters?

A. The Fram oil filters were picked up and taken back by Brooks-Huff.

Q. Did the operator tell you that?

A. He told me that. I questioned him as to where the stock went. He said they picked it up and took it back and shipped in Purolator.

Q. Did you at one time call on Adolph's Sinclair?

A. I did.

Q. Fifty-five hundred block of York Road, Baltimore?

A. Yes.

Mr. Thompson: Mr. Examiner, since this witness 1875 came on the stand, I don't believe I put on the record our customary understanding, that all testimony with respect to oil companies other than Atlantic is received subject to my objection and later motion to strike.

Hearing Examiner Kolb: Subject to your motion to strike.

Mr. Thompson: It will not be necessary for me to repeat that?

Hearing Examiner Kolb: No.

Mr. Correa: I take it the same is true as to the Atlantic-Firestone testimony?

Hearing Examiner Kolb: Yes.

By Mr. Kelaher:

Q. Will you state your experience in selling to Adolph's Sinclair station?

A. Well, in Adolph's case he was a very good customer of ours, until around 1955.

We had the same situation with Mr. Adolph that we had with Mr. Ridgley. He was dividing his purchases between Brooks-Huff and R. J. Looek and Company.

About the middle of 1955 there was some work done on Mr. Adolph's station and Mr. Adolph came to me one week and told me that he would have to cut down on his purchases from Looek and submit the biggest percentage of his orders to Brooks-Huff.

1876 Due to the fact that at that time Sinclair or Sherwood, whichever it happened to be, were after him to build up his volume with Brooks-Huff.

Q. What items were you selling prior to that time to this Adolph's Sinclair station.

A. I sold Mr. Adolph Gates belts, Gates radiator hose, Fram oil filters, DuPont chemical line; practically the same thing I sold Mr. Ridgley.

Q. Were you selling some of these products on a stocking basis?

A. Stocking basis.

Q. Since that time have you sold such products, or any products, on a stocking basis to this station?

A. No, I have not.

Q. Did you at one time call on a Tony Glorioso service station, Old Harford Road and Taylor Avenue, Baltimore?

A. Yes, I did.

Q. Did you sell tires or batteries to this account?

A. No, I didn't sell Mr. Glorioso any tires or batteries. We had the chemicals and the oil filters, Gates fan belts and Gates radiator hose.

Q. During which period did you make such sales to Mr. Glorioso?

A. We made those prior to 1954.

Q. Did you make any such sales—were these sales 1877 on a stocking basis?

A. On a stocking basis.

Q. Did you sell on a stocking basis thereafter?

A. Well, Mr. Glorioso no longer has that station, but somewhere along the latter part of 1954 Mr. Glorioso received a new lease schedule on a month-to-month basis, and at that time he told me that he would no longer be able to purchase his usual items from us, his fan belts and Gates setups were changed over to Goodyear, and he was going to buy from Brooks-Huff for the same reasons that—

Q. Would you please state the substance of the conversation with Mr. Glorioso in some detail?

A. Well, it seems as if Mr. Glorioso had his station remodeled, and approximately a year after he had it remodeled and was back in business again he received a letter from Sherwood, I believe it was at that time, stating that his lease was cancelled as of such and such a date. I don't recall the dates on it. He had no reason to show it to me except he apparently was kind of teed-off about it and presented the letter to me and showed it to me.

He then proceeded to write to New York and there was a lot of discussion pro and con. I had no particular interest in it, but he told me these things. And of course I had to stand there and listen.

Q. What did he tell you?

1878 A. He told me that he had written to New York to find out why his lease was cancelled, and then they sent two men down from the home office and he was approached at his station, and they told him that they would look into it. And about four or five days later he received

a notice that he would be able to operate on a thirty-days lease, a month-to-month lease.

Q. Did he mention anything about TBA during these conversations?

A. After his month-to-month lease was set up then he told me that he was told that his TBA purchases must—his dollar volume must come up higher than it is at the present time. It must come from Brooks-Huff.

Q. Thereafter, did your sales volume decline with this account?

A. Yes. That's right.

Q. Thereafter, were you able to sell this account any products on a stocking basis?

A. We sold Mr. Glorioso nothing on a stocking basis. That may be due to the fact that the gentleman was only there on a thirty-days basis and a month-to-month basis and I don't think he was stocking too much of anything from Brooks-Huff or Loock.

1879 By Mr. Kelaher:

Q. What has been your experience in placing TBA signs in Shell and Sinclair or Sherwood stations?

A. We have been unable to place any type of any display whatsoever.

Q. Have you attempted to do so?

A. We have. We have advertising material in practically all of our major lines that we sell.

Q. Are your major lines nationally advertised lines?

A. That is correct.

Q. What line of batteries do you carry?

A. Autolite.

Q. Would you tell us something about the R. J. 1880 Loock Company? R. J. Loock Company is a large jobber, is it not?

A. We are considered as being one of the largest jobbing houses in the city, and also one of the largest firms on the East Coast in the automotive jobber business.

We have eight men out on the street. We have some seven or eight delivery trucks. Most of our lines are nationally advertised lines. They are lines that millions and millions of dollars have been spent on advertising, such as Autolite, Champion spark plugs, the DuPont line, Gates fan belts and radiator hose, and Fram oil filters.

We have nothing in an off-brand nature that the average car owner hasn't at one time or another seen advertised in some magazine, of some description. It is all nationally advertised merchandise.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Cross-examine.

Mr. Correa: We would like a moment, if your Honor please, off the record.

Hearing Examiner Kolb: Very well.

(A short recess was taken.)

1881 Hearing Examiner Kolb: The hearing will come to order.

*Cross-Examination by Mr. Correa.*

Q. Mr. Lang, you testified that you have no Shell accounts at the present time?

A. No, sir; I have none.

Q. Are you referring to yourself personally?

A. Yes, sir; that is right.

Q. Not to your company?

A. No. Not to the house; only my part.

Q. The house does have a number of Shell lessee accounts?

A. To my knowledge; yes.

Q. Incidentally, Stuart-Pressley is a customer of yours, is he not?

A. To our house?

Q. Yes.

A. Yes, sir.

Q. Isn't it a fact, sir, that your house has at least seven Shell lessee stations as accounts?

Mr. Kelaher: Objection. He only testified as to his marketing area with respect to Shell, Atlantic, and Sinclair stations.

Hearing Examiner Kolb: He can answer if he knows.

A. I really honestly don't know.

1882 By Mr. Correa:

Q. You don't know how many there are?

A. No, sir; I don't.

Mr. Correa: There is a certain technique involved, I suppose, in bringing along witnesses who just don't know about service station accounts that the employer has.

The Witness: I might clarify that a little bit. We have eight different territories. I am primarily interested in my own territory. I am not concerned about the other seven.

Mr. Correa: What I said was not intended to be critical of you, sir.

The Witness: I beg your pardon.

By Mr. Correa:

Q. Turning to Sherwood, and Sinclair accounts, how about an account known as E&R, a lessee, southeastern corner of Hoffett Road and Southern Avenue. Is that your territory?

A. It is in my territory but I don't call on them.

Q. Where do they buy accessories from, do you know?

A. I don't know. You see I might clarify something there, too. We don't have specific territories. In other



words, we overlap. We might call on—I may call on one station on one corner and another of our men on another on the opposite corner. We have no special territory whatsoever. We are free to go wherever we choose.

Q. But a lessee you don't call on?

1883 A. No, sir.

Q. You don't know where he gets his accessories from?

A. No, sir.

Q. How about Joseph H. Countess, southeast corner of Key Highway and Jackson Street?

A. No.

Q. You don't call on him?

A. No, sir.

Q. Do you know that station at all?

A. No, I don't.

Q. How about John Downes, northwest corner of Baltimore Street and Dondalk Avenue?

A. No, sir.

Q. You don't know him?

A. No, sir.

Q. Or that station?

A. No, sir.

Q. How about Charles R. Gross, northeast corner of Pulaski Highway and Golden Ring Road?

A. No, sir, I don't call on him.

Q. Do you happen to know that he is a customer of your house?

A. He is a customer of our house. Yes, I happen to know that.

Q. And he is a Sinclair lessee dealer, you know that, too?

1884 A. Yes, sir.

Q. Do you know what he buys from your house?

A. Indeed I don't; no, sir.

Q. How about F. Calivoda, doing business as Frank's Sinclair on the east side of U. S. 301 at Quarterfield Road, Glen Burnie?

A. No, sir.

Q. Do you know that station at all?

A. No, I don't.

Q. Do you know that he is a customer of your house?

A. I don't know.

Q. Is Mr. Glorioso a customer of yours now?

A. He is; yes, sir.

Q. How about his brother?

A. Joseph?

Q. Yes.

A. On Dondalk Avenue? Yes, he is.

Mr. Kelaher: What type dealer is he, or what brand?

The Witness: He is Sinclair.

By Mr. Correa:

Q. He is an account of yours?

A. Yes, sir.

Q. How about William F. King?

A. No, sir.

1885 Q. Southwest corner of Broadway and Lombard Street?

A. No, sir.

Q. Do you know that station at all?

A. No, I don't.

Q. Do you know whether or not he is an account of your house?

A. Not to my knowledge. I have never heard his name mentioned.

Q. Would it help your recollection if I suggested to you that the salesman's name was Snow who deals with this account?

A. Snowman. Bob Snowman.

Q. Is he one of your conferees?

A. Yes, sir.

Q. Who sells for your house?

A. That is right. Snowman is his name. Robert Snowman.

Q. Who is J. R. Hunt? Is that a competitor of yours?

A. Yes, that is correct. It is the same type house that we have.

Q. How about H. P. and F. N. Koenig, northwest corner of 25th Street and Kirk Avenue; do you know that station?

A. It is not my customer but I have heard his name mentioned at the store. Apparently he does buy something from Doock.

Q. Do you know of his buying 162 gallons of Prestone last month from your house?

Mr. Kelaher: Objection, your Honor. I am not 1886 certain that this product is under the over-ride program.

Mr. Correa: It is under the sales commission plan, which I believe is what you are trying to describe.

Mr. Thompson: It is not under the Atlantic plan.

Mr. Correa: This is a Sinclair plan we are talking of.

Mr. Kelaher: I am glad to have that clarified.

A. I didn't know that; no, sir.

By Mr. Correa:

Q. By the way, you know that Mr. Koenig is a Sinclair lessee dealer?

A. Yes.

Q. Do you know a company called Quaker City Motor Parts?

A. Yes.

Q. Are they a competitor of yours?

A. They are.

Q. Do you sell something which has a trade name Casite?

A. Yes, we do.

Q. Do you know whether the Koenig Sinclair station buys Casite from Looock?

A. Indeed I couldn't tell you.

Q. Claude J. Marston, he operates a Sinclair station in Annapolis, 927 West Street?

A. No, sir, I don't know him. We go down into Annapolis. I don't know whether he is or not.

1887 Q. Do you know whether he is a customer of your house?

A. No, I don't.

Q. Morning Starr and Stephens, northeast side of Reisterstown Road and south of Walker Avenue, Pikesville; do you know that Sinclair lessee station?

A. No, I don't.

Q. Do you have any knowledge or information as to whether they are customers of your house?

A. No, I don't.

Q. How about Q. K. Porter, northeast corner of Patapsco Avenue and Ninth Street, Brooklyn?

A. I know of the account and he is a customer of ours.

Q. Of your house?

A. Yes.

Q. He is not, I take it, from your answer, your account?

A. No, sir, he is not. I think he is Mr. Snowman's.

Q. Do you know whether he is also a customer of Norris?

A. I don't know.

Q. Do you know whether he is also a customer of Baltimore Gas Light?

A. I don't know.

Q. I take it you do know, however, that he is a Sinclair lessee dealer?

A. Yes.

Q. How about T. W. Rennie, Ritchie Highway and 1888 Old Annapolis Road, Glen Burnie. Do you know that Sinclair station?

A. I think he is a customer of Looock's. I have heard his name mentioned occasionally. It rings a bell but I wouldn't say for sure.

Q. Would it help your recollection if I suggested that the salesman on his account is Jensen?

A. Yes, sir, Leslie Jensen.

Q. Is that—

Mr. Kelaher: I am not clear on his answers. Does he mean that is right, there is a salesman named Jensen, or Yes, Mr. Jensen calls on Mr. Rennie?

The Witness: Mr. Jensen is the salesman who calls on Mr. Rennie.

By Mr. Correa:

Q. J. W. Stephens, corner of Ritchie Highway and Jones Road?

A. I don't know.

Q. Do you know that station?

A. No, sir; I don't.

Q. And again I suggest to you that Mr. Jensen is the salesman on that account?

A. That could be. That is his territory.

Q. But you don't have any specific recollection?

A. No, I don't.

Q. How about Charles H. Walper, southeast corner of Lockraven Boulevard and Taylor Avenue?

1889 A. Yes, sir. He is a customer of Looock's.

Q. He is a Sinclair lessee station?

A. Yes, sir.

Q. And is the salesman on his account also Bob Snowman?

A. That is right.

Q. Maybe I asked this question. He is a Sinclair lessee service station?

A. Yes.

Mr. Kelaher: Your Honor, I object to any answer which isn't based on the witness' knowledge. I understand he doesn't call on some of these people, he doesn't know them, and I don't know how he can say whether they are a lessee or not.

Mr. Correa: I dislike interruption of my cross-examination. It is scarcely an objection.

Hearing Examiner Kolb: If you know he is a lessee you can say Yes. If you don't, you can say so.

By Mr. Correa:

Q. I don't think I will go further with this. Most of these service stations I gather are customers either of Jensen or Mr. Snowman?

A. Yes, so far they have been.

Q. There is no use going on with that list. We will wait until they come. I have another question or two.

Adolph's is operated by a man named Adolph?

1890 A. Yes, sir; that is right.

Q. He is quite a figure in the community, isn't he?

A. Yes, he is I would say quite a successful operator.

Q. A successful business man?

A. Absolutely.

Q. As a matter of fact, it is true, is it not, that just a few months ago, a couple of months ago, he was named oil man of the year?

A. Yes, that is right.

Q. In connection with oil progress week?

A. Yes.

Q. That is a designation, I believe, that is given for community or civic accomplishments and that sort of thing?

A. Yes.

Q. He is scarcely the kind of man to be pushed around, is he?

A. I would be inclined to think so, although at that



particular time when I had conversation with him he apparently was being pushed around.

Q. At least that is what he told you?

A. Right.

Q. Do you know whether that was by any chance a brush-off?

A. I hardly think so.

Q. You prefer not to think so, I am sure.

A. Well, I prefer not to think so, it is true. But 1891 under the circumstances that led up to it, I am inclined to believe not.

Q. As to Glorioso, you said that he was told, that he received a notice of cancellation, and that thereafter he was put on a month to month basis.

A. That is correct.

Q. And that he was told to get his dollar volume up?

A. That is right.

Q. Did you visit Glorioso's station pretty regularly around that time?

A. Referring to the time that he was put on a month to month lease?

Q. Yes.

A. Yes. I contacted Mr. Glorioso once a week.

Q. He had several competitors right nearby, did he not?

A. You mean jobbers like ourselves?

Q. No, I mean competitors, service stations?

A. Oh, yes.

Q. Did you note that Mr. Glorioso made a practice at least up to the time he received his notice of cancellation to close his station at eight o'clock in the evening?

A. No, sir; I did not.

Q. Sir?

A. No, sir; I did not.

Q. Were you in a position to observe or did you 1892 call at hours when you could observe?

A. Time I contacted Mr. Glorioso was usually between three or four o'clock in the afternoon, not in the evening.

Q. Did he ever tell you that he was having—

A. No, sir; he didn't.

Q. (Continuing.) —trouble because he was closing his station early and his competitors were staying open?

A. He never said anything to me.

Q. Were Mr. Glorioso's prices higher than his competitors' for comparable items?

A. I wouldn't be in a position to say. I don't know.

Q. You don't know what his prices were?

A. No, sir.

Q. He never spoke to you about that?

A. No, he didn't.

Q. Did Mr. Glorioso, in telling you about the visit of these men from New York to which you referred, tell you that they had pointed out to him that his gallonge was badly off?

A. No, he did not.

Q. You don't know what the position of his gallonge was?

A. I have no knowledge.

Mr. Corréa: No further questions.

By Mr. Thompson:

Q. Mr. Lang, you have been in the automotive supply business as I recall your testimony, a total of about 16 years?

1893 A. That is correct.

Q. As an old timer I suppose they call you "auld Lang syne"? I am not clear on what your sales territory is. Would you be good enough to explain it to us?

A. It is pretty hard to explain. As I explained before, we in Loock and Company don't work on a specific terri-

tory. In that I mean we don't have any boundaries of any description. We are free to call in the city or in the county or anywhere that we choose to go. We are not limited to who we call on. We can call on anyone that we choose.

Q. Do the various salesmen for your house call upon the same service stations?

A. No. You mean the same account?

Q. Same accounts.

A. The same two people calling on the same account?

Q. Yes.

A. No, we do not.

Q. Do you have some method by which you divide the accounts among the salesmen?

A. No. The only way I can answer that for you is in respect of—in that some of us cover certain areas more often than others do. It so happens that the customer list falls that way. As far as the house is concerned, if they feel that they were having an account that they want us to call on, they would try to pick the area where 1894 we are the heaviest and the account is the easiest for us to get to.

Q. Generally speaking, then, do you roam the entire city of Baltimore and environs?

A. I would say so. Not in my particular case, but—

Q. Do you personally?

A. I am personally mostly city.

Q. Mostly in the city?

A. I would say 75 percent of my calls are in the city.

Q. Of course it is part of your job to know who your competitors are, am I correct?

A. That is right.

Q. Mr. Norris yesterday estimated there were about 60 jobbers selling TBA in this area. Would that ring a bell with you?

A. How many?

Q. About 60?

A. I hardly think it is that many.

Mr. Thompson: I would like to take a shortcut, if I may, sir. I will hand this witness, with your Honor's permission, a list, eight and a half pages long, with about eight names on each page, and ask him to take a pencil and just tick the names of these companies which he recognizes as TBA jobbers in the Baltimore area. I think that would be a lot quicker than calling off the list.

May I do that?

1895 Mr. Kelaher: That is agreeable.

Mr. Thompson: I need not have it marked for identification because when the list has been ticked I will ask the stenographer to copy it into the record as part of Mr. Lang's testimony.

Mr. Kelaher: May I ask what the total number of jobbers would be on that list?

Mr. Thompson: I haven't counted them. I would guess there are 60 to 70.

Mr. Kelaher: Did you ask him to tick off jobbers who sell in his territory? Is that the idea?

Mr. Thompson: I will ask the stenographer to read the question.

(Question read.)

1896 Mr. Kelaher: What is your definition of a TBA jobber? What does the list purport to be in the first place?

The Witness: I notice only some of those names you have what we call specialty houses who carry nothing but tires and batteries, and then you have one or two houses there such as Parks and Hull, who are strictly legal, which we term specialty houses. R. J. Loock of course covers a lot of actually TBA items. The houses I checked off there to my knowledge are ones that sell practically the same as we do.

Mr. Thompson: That is what I wanted.

Now I will ask on that basis to have the stenographer copy the list into the record.

Hearing Examiner Kolb: Very well.

(The checked list of TBA Wholesalers in Atlantic Refining Company's Baltimore District is as follows:)

Ancor-Salawitch, Inc., 3100 Washington Boulevard, Baltimore, Maryland.

B-B Auto Supply Co., 335 N. Gay Street, Baltimore, Maryland.

Baltimore Auto Supply, 3515 Dolefield Avenue, Baltimore, Maryland.

Baltimore Gas Light Co., 341 N. Calvert Street, Baltimore, Maryland.

Bearings Service Co., 11 Liberty Street, Westminster, Maryland.

H. R. Boyd, 1202 Maryland Avenue, Baltimore, Maryland.

1897 Brooks Huff Co., 4122 W. Belvedere Avenue, Baltimore, Maryland.

Capitol Auto Parts, 3635 S. Hanover Street, Baltimore, Maryland.

Cleaning Supply and Auto Equipment Co., 6104 Belair Road, Baltimore 6, Maryland.

Comis Auto Supply, 1351 S. Clinton Street, Baltimore, Maryland.

Ditch, Bowers & Taylor, Inc., North & Mt. Royal Avenue, Baltimore 17, Maryland.

F & L Auto Supply, 901 York Road, Towson, Maryland.

Federal Auto Parts, 1301 Light Street, Baltimore, Maryland.

General Machinery and Supply Co., 411 E. Lombard Street, Baltimore 2, Maryland.

Glenmore Motors Co., 6400 Harford Road, Baltimore, Maryland.

B. F. Goodrich Store, 1266 E. North Avenue, Baltimore, Maryland.

Goodyear Service Store, Mt. Royal Avenue & Oliver Street, Baltimore, Maryland.

Holly Auto Supply, Lock Raven Boulevard, Baltimore, Maryland.

J. R. Hunt, St. Paul and Calvert Streets, Baltimore, Maryland.

K & S Auto Supply, 3301 Clark Lane, Baltimore, Maryland.

H. E. Kilner Co., 2840 N. Calvert Street, Baltimore 18, Maryland.

Kitz Motor Co., 3237-39 E. Baltimore Street, Baltimore 24, Maryland.

Kunkel Service Co., Bel-Air, Baltimore, Maryland.

Liberty Auto Supply (Tire Co.), 2346 E. Fayette Street, Baltimore, Maryland.

R. J. Looch Co., 346 N. Gay Street, Baltimore, Maryland.

Marsheck Auto Parts, Inc., 6226 Holabird Avenue, Dundalk, Maryland.

Martin Auto Supply, 1855 W. Pratt Street, Baltimore, Maryland.

Mazer Bros., Eastern Avenue, Essex, Maryland.

Mazer Bros. Auto Parts & Equipment Co., 915 York Road, Towson 4, Maryland.

Monarch Products, 5519 Reisterstown Road, Baltimore, Maryland.

R. W. Norris Co., 330 N. Gay Street, Baltimore, Maryland.

North Port Automotive, Inc., 2817 North Point Road, Dundalk, Maryland.

Parks and Hull Co., Cathedral Street, Baltimore, Maryland.

Stuart Pressley, U. S. #1, Elkridge, Maryland.

Quaker City, 2930 Remington Avenue, Baltimore, Maryland.



Replacement Parts Service, Inc., 41-45 W. Oliver Street, Baltimore 1, Maryland.

Roper & Neagley Co., 1515 N. Fulton Avenue, Baltimore, Maryland.

Salvo Auto Parts, 14 Back River Neck Road, Baltimore 1899, Maryland.

Service Parts Co., 2230 Reisterstown Road, Baltimore, Maryland.

1900 By Mr. Thompson:

Q. You have checked approximately how many houses, Mr. Lang? Would you mind making a rough count?

A. Thirty-nine.

Q. The Loock Company is by no means the only jobber in this area which distributes Mansfield tires, is it?

A. No, sir, they are not.

Q. There are others?

A. Yes, sir.

Q. If I remember your testimony correctly, you distribute Autolite batteries?

A. Yes.

Q. Are there not a large number of other Autolite battery distributors in the Baltimore area?

A. I wouldn't say a large number. There are actually three houses distributing Autolite batteries. There are two other than ourselves.

Q. And those are Boyd, International Harvester, and Service Parts?

A. That is correct. We don't include International Harvester. They service a different trade.

Q. I was interested in noting on the list that you checked that you omitted checking Best Battery Company. Have you ever heard of that company?

A. I have not, no, sir.

1901 Q. Gates fan belts and other Gates products are distributed, are they not, by a very large number of distributors?

A. Yes, I would say approximately seven.

Q. The same would be true with respect to Champion Spark Plugs?

A. Yes.

Q. And certainly Fram and Purolator have a number of distributors in this area, have they not?

A. Yes.

Q. Isn't that so, sir, with respect to substantially all of the accessories carried by your house?

A. Yes. We have nothing exclusive.

\* \* \* \* \*

1913 EDGAR D. FREELAND, JR. was called as a witness and, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Kelaher.*

Q. Would you please state your name?

A. Edgar D. Freeland, Jr., 10 Cedar Road, Catonsville 28, Maryland.

Q. Are you an employee of R. J. Loock Company?

A. I am.

Q. How long have you been with that company?

A. Since 1949.

Q. Are you an outside salesman with that company?

A. I am.

Q. Over what period have you been an outside salesman?

A. The entire period.

Q. Did you at one time call on a Sinclair or Sherwood station operated by J. J. Moran, 2108 Frederick Avenue, Baltimore?

A. Yes, I have.

Q. And what was your experience in selling TBA products to Mr. Moran?

A. I sold him pretty generally over the catalogue as his needs required.

1914 Q. Did you stock any items with Mr. Moran?

A. Gates fan belts and hose, Fram oil filters for a short time. I just changed them over from Walker.

Q. About what time did you sell Gates fan belts and oil filters on a stocking basis to Mr. Moran?

A. Up to about three years ago.

Q. Did Mr. Moran discontinue purchasing these items from you on a stocking basis?

A. He did.

Q. Was any reason given to you as to why he did discontinue making such purchases?

Mr. Correa: Just a moment. If we are going to have a conversation, let's ask for it in the proper way. When and where it took place and who was present.

Mr. Kelaher: That is what I was about to do.

By Mr. Kelaher:

Q. Did you have any conversation with Mr. Moran or anyone at his station concerning TBA?

A. His station manager stated to me that—

Hearing Examiner Kolb: Yes or No.

The Witness: Yes.

By Mr. Kelaher:

Q. Please state the name of the man with whom you conversed, the approximate date of the conversation, and the substance of the conversation.

1915 A. The date would have been—I would say approximately two to three years ago. It was Fritz who was the station manager.

Q. Who was the Goodyear supplier?

A. Brooks-Huff.

Q. And, thereafter, were you able to sell Gates fan belts, oil filters and other items that you had formerly been selling to Moran on a stocking basis on a stocking basis?

A. Not stocking basis. Just fill-ins.

Q. Did you at one time call on Dick Zito's Service Station, located at 2100 West Lexington Street, Baltimore, Maryland?

A. I did.

Mr. Correa: Brand?

Mr. Kelaher: This is a Sinclair station.

Hearing Examiner Kolb: Sherwood or Sinclair?

Mr. Kelaher: I believe it was during the Sherwood period. I will ask the witness.

By Mr. Kelaher:

Q. When did you call on this operator?

A. During the entire operation of both Sherwood and Sinclair.

Q. Did you at one time sell chemicals on a stocking basis to Mr. Zito?

A. Yes.

1916 Q. And did you sell antifreeze on a stocking basis?

A. Part of his requirements.

Q. And at any time did Mr. Zito or someone in his station discuss the matter of purchasing TBA with you? If so, just state Yes or No.

A. Yes.

Q. Would you please state the name of the party with whom you conversed, his position, the approximate time of the conversation, and the substance of the conversation?

A. It was Mr. Cavey, he was the manager of the station during Mr. Zito's absence. He was because of health

reason in Florida a great deal of the time. He was just at the station a couple of months of the year.

By Mr. Kelaher:

Q. Did your sales to Mr. Zito thereafter decline?

1917 A. They did.

Q. Did you at one time call on Joe Majchreak?

A. That is correct.

Q. A Sinclair operator. What was Mr. Majchreak's address?

A. Bank and Wolf Streets.

Q. In the city of Baltimore?

A. The city of Baltimore, yes.

Q. Did you stock any TBA items with Mr. Majchreak, and if so, state approximately when?

A. The entire time I have been with Loock on the street.

Q. And Mr. Majchreak has operated a station during that time?

A. That is correct.

Q. Did you at one time stock Gates belts with Mr. Majchreak?

A. I did along with J. R. Hunt. First, one would get the re-fill and then I would.

Q. Do you still stock Gates belts with Mr. Hunt?

A. I do not. They were changed to Goodyear.

Q. When did this occur?

A. Approximately two years ago.

Q. Did you have a conversation with anyone at that station, and if so, please state—

A. Yes.

Q. Will you please state the name of the person with whom you conversed, the approximate time, and the substance of the conversation?

1918 A. The conversation was with Mr. Majchreak

himself stating that he was asked by Sinclair to change over to Gates belts.

Q. From Gates belts?

A. From Gates belts to Goodyear.

Q. Thereafter, did your business decline with Majchreck?

Mr. Correa: I move to strike the answer unless the witness will identify with whom in Sinclair Mr. Majchreck allegedly spoke, because Sinclair is a corporation and obviously you must speak through someone.

Hearing Examiner Kolb: He stated what this man told him.

Mr. Correa: I move to strike the answer on the grounds of hearsay.

Hearing Examiner Kolb: Denied.

By Mr. Kelaher:

Q. Did your business with Mr. Majchreck thereafter decline on Gates belts?

A. It stopped on Gates belts.

Mr. Kelaher: No further questions.

*Cross-Examination by Mr. Correa.*

1921 Q. As to Mr. Zito, at the time you had this conversation with his station manager, Mr. Cavey, was it not the fact that Mr. Zito's station was carrying Firestone tires, Firestone batteries and Firestone car and home merchandise?

A. He was stocking from both Firestone and Goodyear. As to tires, there is a possibility. I have to take that entirely from memory. I wouldn't want to state positively. I know, yes, that he did stock some Firestone.

Q. Batteries?



A. I won't answer for batteries. I will say for tires.

1922 Q. How about car and home?

A. I don't believe so.

Q. That station actually was sold a little over two years ago, wasn't it?

A. Very shortly after that period, yes.

Q. Do you know that Cities Service bought the station out?

A. They bought it?

Q. And changed it over to Cities Service station?

A. That is correct.

Q. That was prior to January 1, 1956, was it not?

A. It was more than two years.

Q. As to Mr. Majchreck, as I understand it—and correct me if my note is in error—he was selling Walker oil filters and you asked him to change over to Fram and he did?

A. No. That is confused. Moran was selling Walker and he changed over to Fram, and then subsequently had to change to A. C. because of Goodyear.

Q. Did he change to Fram at your request?

A. He had.

Q. Your solicitation?

A. My solicitation.

Q. Mr. Majchreck was selling, I think you said, Gates belts?

A. That's right.

Q. And was asked by Sinclair to buy Goodyear belts?

A. Yes.

1923 Q. Is Mr. Majchreck still a customer of yours?

A. Yes.

Q. What do you sell him?

A. Most any fill-in item that I happen to see he is in need of.

Q. Do you call on him regularly?

A. Every Monday.

Q. What does he do? What is his volume per month?

A. With me?

Q. Yes.

A. An estimate, I would say, \$25 to \$50 a month. That is his purchase, not my earnings. His purchase.

Q. I understand. Now, sir, we went over some 13, I think, probably 13 Sinclair service stations with the last witness who was your associate, Mr. Lang?

A. That's right.

Q. And it developed that a great many of those appear to be handled by a Mr. Snowman and a Mr. Jensen of your office?

A. That's right.

Q. Do they handle most of the Sinclair accounts that your office has; that your house has?

A. I think every man in the organization has some.

Q. How many Sinclair accounts do you have all together?

A. I, personally?

Q. No, the house.

1924 A. I have no way of knowing.

Q. How many men do you have in your organization?

A. Eight.

Q. How many Sinclair accounts do you have personally?

A. Six.

Q. Do you think that is pretty much par for the course?

A. No. Some of the boys would have more than that.

Q. Do you handle Shell accounts?

A. A few.

Q. Which Shell accounts do you handle?

A. Will's Shell, Pratt and Frederick.

Q. Pratt and Frederick?

A. Yes, in a triangle where the two come together.

Q. That is his address?

A. You may have it under another address.

Q. I have Pratt and Smallwood.

A. Smallwood crosses there. Then, I have the Arbutus. That would be Southwestern Boulevard and Selma.

Village Shell, in Catonsville, 601 Frederick Avenue.

And the Parkville Shell at Harford Avenue and Taylor Avenue.

Q. Are those all your Shell accounts?

A. They are my Shell accounts.

Q. I take it that the others of your colleagues have other Shell accounts?

1925 A. Yes. There is one other I didn't recall. It is a new one that has just been opened, at Edmondson Avenue and North Bend Shell. He trades. Joe Fetch. I think he trades as North Bend Shell.

Hearing Examiner Kolb: Are these all Goodyear accounts?

Mr. Correa: These are his customers.

Hearing Examiner Kolb: Are they Goodyear TBA?

The Witness: They are all Goodyear accounts.

Mr. Kelaher: The question is are they Goodyear or Firestone TBA?

Mr. Correa: I must be consistent. I will have to check that because I don't have that information. I am informed, let me state for the record, they are all Goodyear.

By Mr. Correa:

Q. How about Neal's Shell Service, at Hanover and Cromwell, in Baltimore?

A. I don't work that at all.

Q. You have given us the five accounts—

A. That I contact.

Q. How about H. Barbour Shell Service, 6435 Pulaski Highway?

A. I don't know that account.

Q. You know that is a customer of your house?

A. I know it is a customer of Loock. But some other salesman contacts them.

1926 Q. Incidentally, do you know whether Mr. Joe Manor or Mr. Jensen were interviewed by the Federal Trade Commission investigators in this matter?

Mr. Kelaher: Objection. I don't see the relevance of that remark.

Hearing Examiner Kolb: The objection will be sustained.

Mr. Correa: I have no further questions.

Mr. Ballard: I have no questions, your Honor. I hope the usual objection will be noted on the record.

Hearing Examiner Kolb: Yes. It is received subject to a motion to strike as to matters involving other oil companies.

Mr. Kelaher: No questions, your Honor.

(The witness was excused.)

1928 LEWIS A. HUETHER was called as a witness for the Commission and, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Kaplan.*

Q. Would you please state your name and home address?

A. Lewis A. Huether, 400 North Lakewood Avenue, Baltimore 24.

Q. Mr. Huether, are you employed by R. W. Norris and Sons, Inc.?

A. Yes.

Q. In what capacity are you employed?

A. Representative.

Q. How long have you been a representative with that company?

A. Since 1920.

Q. Since 1920?

A. About 36 or 37 years. I have been employed with them longer than that.

Q. How long have you been employed by that company?

A. Since 1914.

Q. How long have you been an outside salesman 1929 with that company?

A. How long? Since 1920.

Q. What has been your territory?

A. Baltimore city and a portcion of Baltimore County.

1930 By Mr. Kaplan:

Q. Mr. Huether, how many Sinclair stations would you say are in your territory?

A. Sinclair as of today, or Sherwood as before they took it over?

Q. That needs some clarification. Sinclair as of today.

A. Forty.

Q. Do you solicit any of those accounts, sir?

A. Yes.

Q. Approximately how many do you solicit?

A. Ten.

Q. Do you sell any of these that you solicit on a stock-ing basis?

A. Yes, some of them.

Q. Are these that you do stock lessee dealers or in-dependent contract dealers?

A. Independent-contract dealers.

Q. You do not sell on a stocking basis any of the lessee dealers, is that correct?

Mr. Mason: I object to that question as leading. This can be gotten at in another way.

1931 By Mr. Kaplan:

Q. You sell your products to these lessee stations on a stocking basis?

A. Some few of the lessee stations. Very few of those on a stocking basis.

Q. Within your knowledge, who is the supplier to these Sinclair stations?

Mr. Mason: Supplier of what?

By Mr. Kelaher:

Q. Supplier of TBA.

A. I wouldn't know who exactly, but who has been told is Brooks-Huff and Kunkel service.

Q. Mr. Huether, have you ever done any business with a Mr. C. H. Mizzele?

A. Yes.

Q. Where is he located?

A. He is on Route 40, on Pulaski Highway and Ebenezer Road.

Mr. Ballard: Could we have an identification of Mr. Mizzele?

Mr. Kaplan: He is a Sinclair dealer.

By Mr. Kaplan:

Q. What type station does Mr. Mizzele operate?

A. Lessee.

Q. What company?

A. Now, with Sinclair.

1932 Q. Mr. Huether, what has been your experience with Mr. Mizzele, with reference to selling TBA?

A. I have been getting some little bit of merchandise from him.



Q. Have you ever sold him on a stocking basis?

A. I have sold him at times the DuPont line, but it seems as though I just can't get in there now with it. That is one of the lines that I used to stock him.

1933 By Mr. Kaplan:

Q. Do you recall when you had any particular conversation with reference to the chemicals that you attempted selling Mr. Mizzele?

A. I wouldn't remember exactly when.

Q. Was it within the last two years?

A. Oh, yes. I do get some DuPont now, but just an occasional. I never get the stocking amount, see. I get a pick-up of something that he runs short of down there.

Q. Did Mr. Mizzele ever give you any reasons for not stocking your chemical line?

1934 A. Well, from the way I understood, he had to buy this—

Mr. Mason: I am going to object to "the way I understood" because that is obviously leading into improper testimony.

Hearing Examiner Kolb: Just state your conversations or facts, but don't say what you surmised or understood.

The Witness: Well, I asked him about the DuPont line and he said No, that he had to buy that now from his supplier of the TBA lines.

By Mr. Kaplan:

Q. Mr. Huether, have you ever done any business with a Mr. B. H. Reitmeyer?

A. B. R.? Herbert Reitmeyer, yes.

Q. When Mr. Reitmeyer was in business, where was he located and what type of company station did he operate?

A. He was located at Pulaski Highway at Chesco Park Road.

Q. What type station did he operate?

A. Sinclair.

Q. Was he a lessee dealer or contract dealer?

A. Lessee.

Q. Did you ever sell Mr. Reitmeyer on a stocking basis?

A. No.

Q. Never did?

A. Once I sold him some DuPont. Once. That is all. I mean in a stocking quantity.

1935 Q. How long had you solicited Mr. Reitmeyer's business?

A. Since he was in business. That is, having that station.

Q. How long?

A. I don't know how many years. I guess it was ten years.

Q. When did he leave the station?

A. I think it was the first of November.

Q. Which year?

A. This year.

Q. Did you ever have any conversations with Mr. Reitmeyer as to why he would not buy your line of TBA?

A. Well, the only thing I know about Reitmeyer is that he was quite a bellyacher. Whether he was pushing me off or not—"I would like to buy it from you, but I can't."

Q. Did he ever give any reasons why he could not buy?

A. No.

Mr. Kaplan: No further questions.

Hearing Examiner Kolb: Cross-examine.

*Cross-Examination by Mr. Mason.*

Q. Mr. Huether, was it possible Mr. Mizzele was just giving you the brush-off?

A. I always took him very sincerely. Whether it was or not, I don't know. But he always had been very frank with me. Very frank.

Mr. Mason: Nothing further.

1936 Mr. Ballard: I assume this testimony is received subject to Atlantic's motion to strike, so far as it refers to Sinclair and/or Sherwood stations.

Hearing Examiner Kolb: The testimony will be received subject to a motion to strike by Atlantic.

Mr. Kaplan: No further questions, your Honor.

Hearing Examiner Kolb: You may be excused.

(Witness excused.)

Mr. Kaplan: May we have a short recess?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

1937 Hearing Examiner Kolb: The hearing will be in order.

JAMES HOOPER was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Kelaher.*

Q. Will you please state your name and home address?

A. James Hooper, 2915 Louise Avenue, Baltimore 14.

Q. Mr. Hooper, were you at one time a Shell lessee service station operator?

A. Yes, sir, I was.

Q. Where was your service station located?

A. 4912 Harford Road.

Q. How long did you operate that station?

A. A year and nine months.

Q. How long a lease did you have?

A. One year.

Q. When did your lease commence?

A. It commenced on May 26.

Q. Which year?

A. 1952.

Q. When did it terminate?

A. May 26, 1953.

1938 Q. And then you stayed in thereafter for nine months? Is that correct?

A. That is correct.

Q. How much capital did you invest in the Shell station?

A. Approximately \$4,000.

Mr. Thompson: If your Honor please, may it be understood that this testimony about Shell will be taken subject to Atlantic's objection and eventual motion to strike.

Hearing Examiner Kolb: The testimony will be received subject to a motion to strike by Atlantic.

By Mr. Kelaher:

Q. Was any of this money borrowed from Shell?

A. No, sir.

Q. How did you raise such money?

A. Mortgaged my home.

Q. At the time you entered the station had a station been in operation there for some time?

A. Yes, sir.

Q. Was there an inventory of TBA in the station?

A. Yes, sir.

Q. Did you purchase that inventory?

A. I did.

Q. Why did you purchase that inventory?

A. Upon the request of Mr. Lump, Shell Oil Company.

Q. Were there Goodyear TBA products in that inventory?

1939 A. There were.

Q. And Firestone?

A. Yes, sir.

Mr. Thompson: I object to any testimony with respect to Firestone from this witness. Firestone and Shell are both non-respondents.

Mr. Correa: We join in the objection.

Hearing Examiner Kolb: Did he testify he handled Firestone and Goodyear?

Mr. Correa: He testified there was Firestone and Goodyear TBA.

Hearing Examiner Kolb: Then I will overrule the objection.

By Mr. Kelaher:

Q. At the time you took over this station or before you took over this station did Shell representatives talk to you about TBA?

A. Yes, sir; they did.

Q. Would you state the substance of the conversations?

Mr. Correa: May we have the representatives identified?

By Mr. Kelaher:

Q. Would you please state the names of the representatives and the substance of the conversation?

A. Of the Shell Oil Company you mean?

1940 Q. Yes.

A. Mr. Jerry Lump.

Q. Do you know what his position was with Shell at that time?

A. I think he was assistant manager—sales manager.

Q. Assistant sales manager?

A. I think. I am not positive.

Q. What was the substance of the conversation with Mr. Lump?

A. I had a conversation with him. He explained that they have an outlet with Firestone and Goodyear, and wanted me to purchase my products from—TBA—from them.

Q. Did they specify where your Goodyear TBA could be purchased?

A. Yes. From Stuart-Pressley.

Q. And when you entered the station from whom did you purchase your TBA?

A. Just what do you mean?

Q. As soon as you entered the station did you begin—

A. I started purchasing from Firestone and Goodyear.

Q. Did you continue to purchase from Firestone?

A. No, I did not. Some I did.

Q. From whom did you purchase TBA?

A. I bought my tires from the Schenuit Tire Company. I bought my batteries from Bowers Battery. And I bought quite a few other supplies from the Quaker City Motor Parts.

Q. From whom did you buy your Schenuit tires?  
1941 A. From Plotkins Tire Company.

Q. When did you commence to purchase Schenuit tires, Bowers batteries, and accessories from Quaker City Motor Parts?

A. Well, it was about a month after I went into the station.

Q. And why did you purchase Schenuit tires?

A. Because I could get a better deal and make more money for myself.

Q. Was the price lower on Schenuit tires than on Firestone or Goodyear tires?

A. Yes, sir. I could make a better profit off of the Schenuit tires than I could off of Goodyear or Firestone.



Q. How did the service compare as between service with respect to Schenuit tires and the Firestone or Goodyear tires?

A. I could get service immediately.

Q. You could get service immediately from whom?

A. From both Bowers Battery or Plotkins Tire Company.

Q. And could you get similar service from Firestone or Goodyear?

A. No, sir.

Q. What terms did you receive from Plotkin and Bowers Battery?

A. Thirty days.

Q. What were your terms with respect to Firestone and Goodyear TBA?

A. COD.

Q. You mean cash on delivery?

A. Yes, sir.

1942 Q. Did Schenuit tires and Bowers batteries have good consumer acceptance in your trading area?

A. Yes, sir.

Q. After you started purchasing Schenuit tires, Bowers batteries, and accessories from Quaker City did you have any conversations with Shell representatives concerning the matter?

A. Well, they—

Q. Just answer Yes or No.

A. Yes, sir.

Q. Please state the names of the Shell representatives, the approximate date of the conversations, and the substance of the conversations.

A. It is going to be pretty hard to put the date in there, the exact date.

Q. Not the exact date.

A. I would say about a month or a month and a half

after I had the supplies information, Mr. Lump and Mr. Lowry both came into the station.

Q. Who is Mr. Lowry?

A. He is the sales manager for Shell Oil Company.

Q. They came to your station?

A. Yes, sir, and remarked the supplies I had in the station it wasn't according to what the conversation we had at the Shell Oil office. And I told them that I didn't express whose product I was going to handle at the time I signed that lease. They said they had an outlet from whom I could buy my supplies from. And I said I 1943 am opening this business with the expectation of making a living for myself, and why should I kick-back to Shell, let Firestone kick-back to Shell when I can make that profit myself.

Mr. Thompson: Your Honor, it is perfectly apparent this man is talking about two non-respondents. This is a wholly different type objection. I move that all this testimony be stricken.

Mr. Kelaher: Your Honor, may I ask one question?

Mr. Correa: I join in the motion.

Hearing Examiner Kolb: He was handling both Good-year and Firestone. And he testified that the official said they had an agreement that he should handle both of those.

Mr. Correa: I understand, your Honor.

Hearing Examiner Kolb: I am not going to try to separate out when you have two involved, to try to separate one from the other. I don't think it is proper.

Mr. Correa: I still submit the last question is leading and suggestive and improper under the circumstances.

1944 Hearing Examiner Kolb: I agree that the last question does.

Mr. Kelaher: I will withdraw the last question. I re-

gret asking it. I agree with counsel. I shouldn't have asked it.

Hearing Examiner Kolb: I will sustain the objection.

By Mr. Kelaheer:

Q. Will you go ahead with your conversation?

A. Where did I leave off?

Hearing Examiner Kolb: Read the last answer.  
(Read.)

Mr. Thompson: Nothing at all about Goodyear, sir.

By Mr. Kelaheer:

Q. Would you state as specifically as possible what TBA Mr. Lump and Mr. Lowry were talking to you about?

A. Well, they were talking to me about—

Mr. Correa: Same objection, if your Honor please. Why don't you let him state the conversation?

Mr. Kelaheer: That is what I am getting at. That is what I am asking him.

Mr. Correa: I don't think you should lead him. He said what TBA they were talking about.

By Mr. Kelaheer:

Q. Go ahead.

A. This is getting me confused. Do you want me 1945 to state my case?

Mr. Kelaheer: Can he answer the question.

Hearing Examiner Kolb: Read the last question.

(Question read.)

Hearing Examiner Kolb: Overruled.

A. They were talking about Goodyear and Firestone TBA.

By Mr. Kelaheer:

Q. Now carry on with the conversation. What was the rest of the conversation? Did you take it from that point?

A. I told them that I didn't commit as to whose product I was going to use.

Q. What happened after that, if anything?

A. They told me I only had a year's contract and if I didn't like what was going on, to get the hell out of the station. That was a little over a month after I was in there.

Q. When was your lease terminated?

A. It was supposed to be terminated—

Q. At the end of that year?

A. At the end of that year.

Q. Thereafter did you continue to purchase Schenuit tires and Bowers batteries?

A. I did.

Q. Were any comments ever made to you by Shell representatives?

A. They kept on trying to push these other products on.

Q. By "they" you are referring to whom?

1946 A. Firestone and Goodyear.

Q. Which Shell representatives are you referring to?

A. Jerry Lamp.

Mr. Kelaheer: I would like to have this clipping marked for identification, your Honor.

Hearing Examiner Kolb: That will be Commission Exhibit 346 for identification.

(The document referred to was marked Commission Exhibit 346 for identification.)

By Mr. Kelaheer:

Q. Mr. Hooper, I show you Commission Exhibit 346 for identification and ask you to state what this is?

A. That is an advertisement of the Schenuit Tire people. They called me and asked me if I would permit them to put my name, picture, in the paper with their adver-

tisement of selling Schenuit tires, and I agreed. I said it would not only help me but it would also help the station.

Q. Did this advertisement appear in a Baltimore newspaper?

A. Yes, sir.

Q. And did this advertisement appear after the conversations you had with Mr. Lump and Mr. Lowry which you referred to?

A. Right around in that time. Whether it was before or after I wouldn't—I can't say.

Q. After this advertisement appeared, did you have any conversations with Shell representatives concerning it?

A. Oh, yes.

Q. With whom did you speak?

A. Well, they came around with a story—

Q. Who?

A. Jerry Lump. Mr. Lump.

Q. What did Mr. Lump say to you?

A. Just came around and said, "What a nice looking picture you have in the paper."

By Mr. Kelaher:

Q. Did you purchase a product known as Wynn's Friction Proofing Oil?

A. Yes, sir.

Q. What is it?

A. It is an oil additive.

Q. Is that in the Goodyear TBA line?

A. I am pretty sure it is. No, it isn't. Wynn's is not.

Q. Did you ever have—

Mr. Correa: I move to strike.

Hearing Examiner Kolb: Motion to strike denied.

By Mr. Kelaheer:

Q. Did you ever have any conversations with 1948 the Shell representatives concerning your carrying Wynn's Friction Proofing oil?

A. Well, they just didn't like the idea of me carrying it and they said they had another additive to carry, why didn't I carry that.

Q. After your year's lease was up, was your lease renewed?

A. No, sir.

Q. When were you advised it would not be renewed?

A. They came around and told me that my lease was up.

Mr. Correa: Who is "they?"

The Witness: Mr. Lump. The Shell Oil representative.

Mr. Correa: You mean he, not they.

By Mr. Kelaheer:

Q. Did you continue on the station after your lease terminated?

A. Yes, sir; I did.

Q. At whose request?

A. The Shell Oil Company; Mr. Lump.

Q. How long did you continue?

A. Nine months.

Q. What was your reason for continuing?

A. Well, it was either continue on and try to get some of my stock back, capital back, or else lose it all.

Q. At that time were you under any lease at all?

A. No, sir.

1949 Q. When you finally did leave the station, did you incur any financial loss?

A. I guess about \$2,000 or more.

Mr. Kelaheer: Your Honor, at this time I would like to offer CX-346 into evidence.

Mr. Correa: Except that it is irrelevant and immaterial and cluttering the record, I have no objection to it.



Mr. Thompson: Atlantic objects.

Hearing Examiner Kolb: The objections will be overruled. The document will be received in evidence, subject to a motion to strike by Atlantic.

(The document heretofore marked COMMISSION EXHIBIT 346 for identification was received in evidence.)

*Cross-Examination.*

Mr. Correa: May I have a moment, if your Honor please?

Hearing Examiner Kolb: All right.

Mr. Correa: May we have a few minutes' recess?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

By Mr. Correa:

Q. Mr. Hooper, you have related in the course 1950 of your direct testimony a number of conversations which you say you had with Mr. Lump, and I guess with a Mr. Lowry, is that right?

A. Yes. I only had a conversation with Mr. Lowry about twice. Mr. Lump was a monthly visitor to the station.

Q. Have you told us all you can remember about those conversations?

A. Well, practically all.

Q. Let's dispense with the practically. If there is any remaining thing you can remember, tell us.

A. Well, every once in awhile he would come in and say what am I going to do? Why don't I put this supplies in, which my capital was limited. After I took over the station I figured on disposing of some of the equipment I had in here to replenish my capital so that I could go

ahead and restock the station like I wanted to. In other words, it was a pressure at all times.

Q. Would you be good enough, Mr. Hooper, to confine yourself to the conversations?

A. That is the conversation.

Q. Anything said by you or Mr. Lump or Mr. Lowry in any of these conversations.

A. It has been a couple of years since I have been in the service station now and I can't just come right out word for word.

Q. I understand. I just want to be sure we have 1951 exhausted your recollection on the subject.

A. Well, you have got it all, practically all of it. I won't say every word.

Q. But every word you can remember?

A. That is it.

Mr. Correa: I would like to have marked at this time for identification as Respondent Goodyear's Exhibit 5 this one-page document on the letterhead of Shell Oil Company and bearing date of May 26, 1952.

Hearing Examiner Kolb: That may be marked as Respondent's Exhibit G-5.

(The document referred to was marked Respondent's Exhibit G-5 for identification.)

Mr. Kelaher: Is that signature J. A. L-o-w-r-y?

Mr. Correa: I prefer not to discuss the document until I have finished examination, counsel, if it is all right with you.

Mr. Kelaher: I was just asking for information. I am not sure.

By Mr. Correa:

Q. I show you Respondent's Exhibit G-5 for identification, Mr. Hooper, and direct your attention to the signature appearing in the lower left-hand corner thereof under-

neath the legend "Acknowledged:" and ask you, can you identify that signature?

1952 A. Oh, yes.

Q. Whose signature is it.

A. That is mine.

Q. Did you read that document before you signed it?

A. Yes.

Q. Now, sir, in any of these conversations you had with Mr. Lump or Mr. Lowry, did you ever mention or refer to that document, Respondent's Exhibit G-5 for identification?

A. That doesn't state in there—

Q. Did you ever mention or refer to that document, Respondent's Exhibit G-5?

A. Yes, sir.

Q. Why didn't you tell us on direct that you did?

A. I told you that when I was over at the office that I didn't commit myself as to who I was going to buy my products from.

Q. You didn't tell us—

A. I did. I certainly did.

Q. You didn't tell us there was any document in writing signed by you and Mr. Lowry.

A. I did. I had a conversation with Mr. Jerry Lump. Before I even signed that I told him that I was going to take the station over, and after the document was signed I said there was nothing in there stating who I was to buy my products from, that they had an outlet for me that they could get the stuff for me, get the merchant-1953 disc for me.

Q. Did you in these conversations with Mr. Lump recall to him that you had signed the document?

A. Yes, sure.

Q. Of this kind, and that Mr. Lowry's signature also appeared on the document?

A. I said at the time I signed this there was nothing in here stating who I was to buy my supplies from.

Q. Did you call to his attention—

A. Yes, sir.

Q. (Continuing)—that you signed a letter—

A. Yes, sir.

Q. (Continuing)—from Mr. Lowry—

A. Yes, sir.

Q. (Continuing)—stating that your choice of TBA was to be entirely voluntary?

A. Well,—

Q. Did you do that or didn't you?

A. No, I didn't tell him it was going to be entirely voluntary. No.

Q. Did you tell him that you had acknowledged receipt of a letter from Mr. Lowry in which—

A. Yes, sir.

Q. (Continuing)—in which Mr. Lowry stated—

A. Yes, sir.

1954 Q. You reminded him of that?

A. I reminded Mr. Lump. Not Mr. Lowry.

Q. Did you remind him several times?

A. Yes, sir.

Q. Was that frequently mentioned in your conversation?

A. Oh yes. I told him, I said there was nothing stating in there who I was to buy from.

Q. Was there any particular reason why you didn't refer to this document in your direct testimony?

A. Well, they came out and wanted to know why I wasn't buying from these other concerns.

Q. My question, sir, is, is there any particular reason why you did not refer to this document in your direct testimony?

A. No. I just didn't think if it, that is all, in this testimony here, if that is what you mean.

Q. You didn't think perhaps we had the original?

A. I know you have all the records in the world right here. That is all.

Q. What did Mr. Lump say when you called his attention to that document?

A. He just said, "You said you were going to buy from"—I said, "Wait a minute, I didn't say I was going to buy from Firestone or Goodyear." I bought as much as I could from both of them.

Q. Now, sir, you testified that the terms you were 1955 offered by Mr.—you said specifically that the terms you were offered on tires by Firestone and Goodyear were C.O.D.?

A. Yes, sir.

Q. From whom, with whom specifically did you have those dealings?

A. I believe you have the gentleman in the room here right now. I don't recall his name.

Q. You say Firestone. Did you deal with the company?

A. A Firestone salesman.

Q. Did you deal with company headquarters in Akron or a salesman here in Baltimore?

A. A salesman in Baltimore.

A. Yes.

Q. With Goodyear with whom did you deal?

A. A dealer here in Baltimore.

Q. What was his name?

A. Stu-Pressley.

Q. Is it the fact, sir—

A. I bought very little from him. I will say I won't buy any of his products. If I ever open another station I wouldn't buy from him.

Q. Isn't it the fact, sir, that you asked Mr. Pressley to sell you tires on a C.O.D. basis?

A. No, I didn't. He told me it was C.O.D. When 1956 he brought the merchandise out it was C.O.D.

Q. Did you ask—

A. Yes, I did.

Q. (Continuing)—Mr. Pressley for credit?

A. Yes, sir.

Q. On what terms?

A. On thirty days.

Q. On tires?

A. Yes, sir; on all accessories.

Q. Mr. Hooper, you operated your station for a year?

A. A year and nine months.

Q. A year under lease, is that correct?

A. A year under lease, that is correct.

Q. Is it correct that your gallonage was low?

A. It was going down all the time.

Q. You did about 8,000 gallons a month?

A. Yes.

Q. The preceding dealer had done about 10 to 15 hundred?

A. Yes, sir.

Q. And the fellow who followed you did about 14?

A. I don't know what he is doing now because I don't even take that much interest in it. The damper was put on me a month after I was in there.

Q. It is true, is it not, that the Shell representative, Mr. Lump, spoke to you from time to time about the low 1957 gallonage?

A. No, he didn't say nothing to me about low gallonage.

Q. Never did?

A. No, sir.

Q. The gallonage was going down and he never mentioned it?

A. No, sir.



Q. He never suggested that you ought to employ some helpers in the station?

A. I worked that station myself. I had help there.

Q. Did he suggest that you have help?

A. He knew I had help. He didn't suggest anything like that. He knew I had help.

Q. And you did have help?

A. Yes, I did.

Q. Whom did you employ?

A. A fellow by the name of—I can't even think of his name now. His name was Dave—I can't think of the boy's last name. But I have his records home.

Q. How long did you employ this man?

A. I guess about six months.

Q. Which six months were they, sir?

A. Six months before I left there, or better.

Q. Did you employ this Dave that you refer to in response to a suggestion by Mr. Lump?

A. No, sir.

1958 Q. You are quite sure that Mr. Lump—

A. Yes, sir.

Q. (Continuing.) —did not suggest to you that you needed a helper in the station?

A. No, sir. He said I would need some help, I couldn't work it myself.

Q. How about the first six months you were in there, did you work it by yourself?

A. Well, the first two or three weeks, no. I had two extra helpers.

Q. Who were they?

A. The young boys who used to work with me when I worked in another company.

Q. What are their names?

A. Oh, man, I don't know their names. I can't figure their names. I have their records at home.

Q. They worked for you for two or three weeks?

A. A fellow by the name of Walberger, I believe, yes, and a fellow by the name of Peach.

Q. They worked for you for two or three weeks?

A. Yes, sir.

Q. And thereafter you worked the station alone, did you?

A. Well, one of them <sup>went</sup> to service. Yes.

Q. And you worked the station alone for about five months?

A. Yes, sir. No, I had another man come in 1959 eventually.

Q. What was his name?

A. Al—I can't think of his last name—he drove a Good Humor truck after he—he drove a Good Humor truck in the summer time.

Q. How long was he employed?

A. I guess a little over a month or more.

Q. So, the period in which you worked the station alone—

A. I had another man in there too.

Q. (Continuing.) —was about four months?

A. This is working in a period, now. I can't give you—I worked the station a year and nine months. And out of this nine months there was about five extra help. They wasn't all working at one time.

Q. Was there any period when you worked the station alone?

A. Oh, yes. All during the day.

Q. Any period of time when you had no employees?

A. I had the station open from seven o'clock in the morning until five or six o'clock at night, and when I would go home to get something to eat, I would have this man come in to take over.

Q. Did you ever have any day help?

A. Well, evening help.

Q. Did you ever have any help during the day?

A. No.

Q. Wasn't it suggested to you by Shell that you 1960 ought to have help during the day?

A. They said I should have help there.

Q. Who was that? Mr. Lowry?

A. No. I never saw Mr. Lowry.

Q. Excuse me. I meant Mr. Lump.

A. Lump?

Q. It was L. Lump made that suggestion?

A. Yes.

Q. And you never did get any day help, is that correct?

A. No. Just evening help.

Q. Is it the fact, sir, that you had a physical disability?

A. Oh, yes.

Q. And did that impede you to some degree in the performance of various service jobs?

A. No, sir.

Mr. Kelaher: Objection. I think that that is highly uncalled for.

Hearing Examiner Kolb: Objection overruled.

Go ahead.

The Witness: You see plenty of lame men operating filling stations. You go out here to Lockraven Boulevard and Jopa Road and there is one with a club foot operating. There is no objection to him operating the station.

By Mr. Correa:

Q. Did Mr. Lump ever suggest to you that that 1961 was an additional reason why you ought to have help?

A. No, sir.

Q. He did suggest that you ought to have day help?

A. He come out and said I should have help.

Q. Did he suggest to you that your gallonage would probably improve if you did have help?

A. No, sir.

Q. In short, you want us to understand, Mr. Hooper, that Mr. Lump, despite your declining gallonage, never mentioned that subject to you?

A. To have help to pump that gas? No, sir.

Q. No. Let me be sure that you understand my question. Do you want us to believe that although you had, as you testified, a declining gallonage that you were pumping, the gallonage was going down, Mr. Lump never mentioned or referred—

A. He suggested I get help there, yes. He suggested that I get cards and mail out all around the neighborhood. He thought that I would put on a deal of giving a television away, or glasses. Well, Shell Oil Company ain't paying for that.

Q. Did Mr. Lump refer to your declining gallonage or did he not, in connection with these suggestions?

A. Yes, he referred to that, and he said, "Your gallonage is down, why don't you give a deal, or something like that. Why don't you put a big display on?"

Q. So, he suggested you improve your gallonage?

A. Oh, yes; that way.

1962 Q. Didn't you tell us a moment ago that Mr. Lump never mentioned your declining gallonage?

A. Did I say that?

Q. I am asking you, don't you remember saying it?

A. I think I did, yes.

Q. And that was wrong, wasn't it?

A. What do you mean, it was wrong.

Q. You just told us now that Mr. Lump did mention your declining gallonage?

A. He said I was losing on gallonage, yes.

Q. So, when you said a while ago that Mr. Lump never mentioned your declining gallonage you were wrong?

A. You are getting me confused around. He did mention that, yes. He didn't have to mention it. I could tell by the records.

Q. After your lease was cancelled you remained in the station for nine months?

A. I did.

Q. And that was enable Shell to find a replacement for you, was it not?

A. Yes, sir.

Q. That was a mutual agreement between you and Shell?

A. Oh, yes. Not with Shell. I mean by Jerry Lump. I don't know what it was with Shell.

Q. Mr. Lump represented the Shell Oil Company?

A. Yes, sir.

1963 Q. Your purpose in that was because you wanted to sell your inventory to your successors?

A. I wanted to get out of it as much as I could possibly get out of it, that is the reason I stayed at the station.

Q. You did sell your inventory of TBA to your successor, did you not?

A. Yes, I did.

Q. And your successor was a Shell lessee, was he not?

A. That's right.

Q. What did the inventory which you sold him consist of?

A. Tires, batteries.

Q. What kind of tires?

A. Schenuit tires.

Q. What kind of batteries?

A. Bowers batteries.

Q. And accessories, perhaps?

A. Well, everything.

Q. What others?

A. Wynn's Friction Proof oil, Macs-it products, Shell products.

Q. So, you sold your entire inventory of TBA to your successor?

A. Yes.

Q. And you were unable to sell him, however, some of your equipment?

A. That's right.

1964 I have a battery charger home. I have that now. And a lot of other stuff.

Q. You hold that against the Shell Oil Company, don't you?

A. Partly, yes.

Mr. Correa: I have no further questions, if your Honor please.

Mr. Kelaher: Mr. Examiner, I would have no objection to having Respondent's Exhibit G-5 for identification become a Commission Exhibit at this point.

Mr. Correa: Counsel has called attention to an oversight which I appreciate. I had meant to offer Respondent's Exhibit G-5.

Hearing Examiner Kolb: Counsel suggested it be offered as a Commission Exhibit.

Mr. Correa: That is fine.

Mr. Kelaher: I now offer Commission Exhibit 347 into evidence, formerly Respondent's G-5.

Hearing Examiner Kolb: Commission Exhibit 347 will be received in evidence, subject to a motion to strike by Atlantic.

(Whereupon, the document, heretofore marked Respondent's Exhibit G-5 for identification, was received in evidence as COMMISSION EXHIBIT 347.)

Mr. Thompson: I have no questions.

Mr. Kelaher: I have no further questions.



1965 (Hearing Examiner Kolb: You are excused.  
(The witness was excused.)

Hearing Examiner Kolb: Let the record show that Respondent's Exhibit G-5 has been withdrawn.

(Whereupon, Respondent's Exhibit G-5 for identification was withdrawn.)

Mr. Kelaher: May we have a short recess?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

Hearing Examiner Kolb: The heading will be in order.

JOSEPH SCHEINER was called as a witness and, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Kelaher.*

Q. Will you please state your name and home address?

A. Joseph Scheiner, 3605 Woodlea Avenue, Baltimore 14.

Q. And are you associated with the S&S Tire Company?

A. The S&S Tire Company is a corporation. I am the president of it.

Q. What is the business of the S&S Tire Company, and what is the present address of the S&S Tire Company?

A. We have a re-cap shop. We sell the re-caps to service stations as well as retail. Also handle new tires as distributors, and batteries. And we are presently 1966 located at Saratoga and Pearl Streets. Our shop is on Franklinton Road.

Q. What is the address of your shop?

A. Franklinton Road and Harlen Avenue.

Q. Are you an outside salesman for the firm, in addition to your other capacity?

A. I am the only outside salesman for the firm.

Q. What are generally the boundaries of your sales territory?

A. Baltimore and its environs, to Essex and Dondalk.

1969 By Mr. Kelaher:

Q. What brand of batteries do you currently handle—new batteries?

A. Bowers.

• Mr. Thompson: Mr. Kelaher, unless you are going to proceed further and identify the Firestone salesman about whom you were talking, I move to strike that part of the testimony because it is not sufficiently specific to meet the standards set up in this proceeding.

Hearing Examiner Kolb: Can you identify the salesman?

1971 Hearing Examiner Kolb: All right.

By Mr. Kelaher:

Q. Mr. Scheiner, did you at one time solicit the business of a Shell service station known as Blackie D'Angelo, a Shell service station at Frederick Avenue and Hilton, in Baltimore?

Hearing Examiner Kolb: Selling what kind of tires?

The Witness: Blackie bought—

By Mr. Kelaher:

Q. Did you solicit his business?

A. Yes.

Mr. Correa: Could we have an answer to the question?

Hearing Examiner Kolb: What tires?

By Mr. Kelaher:

• Q. At that time, state which brand of tires and which brand of batteries you were handling?

Mr. Correa: Not you, D'Angelo.

Mr. Kelaher: I think we have to establish first that this man was selling tires to this station.

Hearing Examiner Kolb: Let the witness answer.

The Witness: I sold Blackie Vanderbilt tires, Firestone tires, Lee, and Bowers batteries. Because I solicited him, if that is necessary.

By Mr. Kelaher:

Q. Were you selling any of the products you have mentioned to Mr. D'Angelo? Were you selling products to him? -

A. Yes.

1972 Mr. Correa: He just said he was.

Mr. Kelaher: Thank you.

By Mr. Kelaher:

Q. Did you state the period during which these sales were being made? The approximate years?

A. I started, I was selling Blackie from about 1950 through 19..... to the time he sold out

Q. At any time—

Mr. Correa: When was that?

The Witness: I think it was about '55.

By Mr. Kelaher:

1974 Q. Let me ask you, Mr. Scheiner, whether Mr. D'Angelo when you called on him carried Goodyear TBA?

A. I am quite sure he did not.

Q. Did you at one time call on a Sherwood station known as Burt's Betholine, at North Avenue and Winchester, 2600 block—would that be Winchester?

A. That would be North Avenue. His location is North Avenue and Winchester.

Yes, I did business with Burt in Vanderbilt tires and Bowers batteries.

1975 Q. Were you able to sell Bowers batteries to this account on a stocking basis?

Mr. Thompson: Atlantic makes the customary objection, and I assume the testimony will be received over my objection, subject to my motion to strike.

Hearing Examiner Kolb: Sherwood was Sinclair? The testimony will be received subject to a motion to strike by Atlantic.

By Mr. Kelaher:

Q. The question is, were you able to sell Bowers batteries to this account on a stocking basis?

A. Yes, I did sell him on a stocking basis.

Q. About what year did you sell this account on a stocking basis, or years?

A. I would say '53 or '54.

Q. Did you have any conversation with the operator of Burt's Service Station concerning his purchase of TBA from you?

A. He told me he wouldn't be able to stock them any more.

Q. Would you please answer Yes or No, and then I will fix that. Did you have a conversation with him concerning that?

A. Yes.

Q. Will you please state the approximate date and the place of the conversation and the substance of the conversation?

A. I would say it was about March, 1954. He told me that his Sinclair salesman objected to his stocking  
1976 Bowers batteries; that he would have to stock Good-year batteries instead. Do you want anymore?

Q. Whatever the conversation was.

A. So, he said he would continue buying the Bowers batteries as he needed them, and the tires, too.

Q. Did that mean—

A. But he wouldn't stock them.

Q. He would?

A. He would not stock them. I did notice that he didn't buy as many as he had before.

Q. Thereafter, did your sales of Bowers batteries and Vanderbilt tires—

A. Declined.

Q. —decline to this account?

A. Yes, sir.

Q. Did you at one time call on a Sherwood or Sinclair station in the 5600 block of Bel Air Road, operated by Amador Sarioego?

A. Yes.

1977 Q. During which period did you solicit business from this station?

A. I would say off and on since about 1949 through 1953. I did some re-capping for him and vulcanizing. Also sold him some Lee tires.

Q. At any time did you have any conversations with Mr. Sarioego concerning his purchases of TBA? Answer Yes or No.

A. Yes.

Q. Now please state the approximate time of the conversation, the place, and the substance of the conversation.

A. He said he couldn't stock the Lee tires. He could only order them if he had definite orders from his customers for them; that he would have to continue stocking Goodyear tires. I asked him why, and he said his salesman got after him.

By Mr. Kelaher:

Q. Did you at one time call on a service station operated by a Mr. Ward, located in the Brookline area of Baltimore?

A. Yes, I did.

Q. And were you able to sell tires, batteries, or recapping to this account?

1978 A. I did some recapping for Ward.

Q. Did you continue to do recapping for him?

A. I haven't done any Ward recapping for maybe a year and a half.

Q. Did you solicit Mr. Ward's business for recapping up to a year and a half ago?

A. Yes, I did.

Q. Why did you stop soliciting his business since that time?

A. I would say—

Q. Let me ask you: Did you have any conversations with Mr. Ward concerning recapping? Answer Yes or No.

A. Yes, I did.

1981 By Mr. Kelaher:

Q. Did you at one time solicit tire and battery business from a Joe Fotia?

A. Yes.

Q. Where is Mr. Fotia located?

A. At Gray Manor.

Q. When did you begin soliciting business from Mr. Fotia, and continuing until when?

Mr. Thompson: May we have on the record, Mr. Kelaher, please, what kind of a dealer he was?

By Mr. Kelaher:

Q. What type of dealer is Mr. Fotia?

A. Sinclair.



Q. And during what period did you solicit Mr. Fotia's business?

A. Fotia started, I think, about three years ago. He wrote to Vanderbilt and asked for one of their solicitation. They turned over the letter to me to contact him. So I contacted him regarding Vanderbilt tires.

Q. At that time did you have a conversation with him concerning the tires?

Mr. Correa: At what time?

Mr. Kelaheer: He has fixed the date. About three years ago.

The Witness: That was my first contact with him. I sold him a few.

By Mr. Kelaheer:

Q. Just state the substance of your conversation with Mr. Fotia at that time.

A. When he decided not to stock them, I tried to sell him—

Mr. Correa: I move to strike "when he decided not to stock them."

The Witness: I tried to sell him recapping.

By Mr. Kelaheer:

Q. Did you have any conversations prior to 1956 with Mr. Fotia concerning his purchase of tires or batteries from you?

A. Yes.

Q. Would you please state the approximate time 1983 and date of the conversation, or dates, if there were more than one?

A. We had conversations now and then. I would say that about the fall of 1956 he—

Q. Did you have any conversations prior to 1956 with Mr. Fotia?

A. Yes.

Q. When did you have conversations with him prior to 1956?

A. I would say in the last—

Q. Did you have conversations with him in 1955?

A. Yes, in 1955 I did.

Q. Will you please state the substance of the conversation or conversations that you had with him at that time?

A. I tried to get him to stock tires from me but he told me that he had already caught "H" from his Sinclair salesman because he had on hand some U. S. Royals and Armstrong tires that he bought from Burke-Savage, so he didn't want to stock any other brands. He told me that he was threatened with lease cancellation if he handled any brands other than Goodyear. I found out that he told me—

Q. Was that the end of your conversation with him?

A. That was the end of the conversation, yes.

1988 JOSEPH E. SCHEINER resumed the stand and, having been previously duly sworn, testified as follows:

*Cross-Examination by Mr. Correa.*

Q. Mr. Scheiner, you have told us you have a recapping business?

A. Yes, sir.

Q. And that you also distribute tires and batteries?

A. Yes.

Q. And do you also have a service station business?

A. Yes.

Q. What gasoline do you pump?

A. We formerly had Atlantic. Now we have Crown.

Q. How many employees do you have?

A. Right now there are four. There were five at that time.

Q. Which time?

A. During the period covered by this inquiry.

Q. What period do you have in mind?

A. Up until two and a half years ago.

1989 Q. Two and a half years ago. And in the last two and a half years you have had four employees, is that right?

A. That's right.

Q. Is that in your whole operation, station and recapping?

A. We don't do much station work.

Q. How many of your people are employed in the recapping work?

A. Two.

Q. How much recapping plant do you have?

A. We have four molds. Four recapping molds, two vulcanizing molds, two spotters.

Q. How many men do you have engaged in that work?

A. Two.

Q. Do you have a man to look after your pumps?

A. Yes. One man.

Q. What does your fourth man do?

A. I am he.

Q. And you do—

A. Outside.

Q. Outside work?

A. Yes.

Q. Do you solicit recapping business?

A. Yes.

Q. And you sell tires and you sell batteries?

A. Yes.

1990 Q. What part of your business, in terms of let's say your annual dollar volume, is in recapping?

A. About thirty to—around thirty thousand.

Q. I was thinking more of a percentage than I was of an absolute figure.

A. About—I guess it would run around 65 to 70 percent. It would be more than \$30,000.

Q. What part of your business, percentage-wise, would be in your pumping operation, or service station operation, let's say?

A. Maybe ten percent.

Q. And the remaining twenty percent would be—

A. In new tires and batteries.

Q. —in new tires and batteries?

A. Yes.

Q. That activity is carried on principally by yourself?

A. Yes.

Q. Do you operate a truck?

A. Yes.

Q. One truck or more than one?

A. One. I handle one that I—it is a station wagon.

Q. And you drive that yourself?

A. I drive that. And I have a pickup truck in addition to that. One of the fellows in the shop uses that for quick deliveries and pickups.

1991 Q. You spoke of selling to service station dealers on a stocking basis?

A. Yes.

Q. Is it correct, sir, that nowadays at least—by “nowadays” I mean post-World War II, really—most service stations order TBA merchandise pretty much from week to week on a basis of keeping their inventory up to whatever size they have in mind as the proper inventory of the particular item involved?

A. Well, it varies according to the operator, I would say. Some of the smaller fellows won't stock any tires, new tires.

Q. They just don't stock at all?

A. Some won't.

Q. Those—

A. They don't have the money in lots of cases.

Q. Those fellows, I take it, pretty much buy tires on a spot basis as they have need for them?

A. Yes. Of course there are others who stock considerably.

Q. What would you say the average is?

A. It runs from nothing all the way up. There is no limit.

Q. What would you say the average is?

A. Esso dealers buy in lots of a hundred tires at a time, under their setup.

Q. Hasn't the—

A. Others less.

1992 Q. What I was getting at was this: Having the stocking habits, if we may call them that, of service stations, been affected by the introduction after World War II of these wagon peddlers, I believed they are called in the trade?

A. I see a number of them around. I wasn't in it before the war.

Q. As a matter of fact, they are a part of your competition, aren't they?

A. They handle mostly accessories, which I don't go into. None of them handle new tires that I know of. I don't know of any of them handling batteries. And recapping, none of them do.

Q. I wasn't including or thinking of recapping in this connection. You don't know of any wagon peddlers who deal in batteries?

A. I don't know of any.

Q. You spoke of a conversation—actually I have it in my notes that the conversation was with Burt's Betholine station. I assume that was some individual?

A. Yes.

Q. Who was it?

A. I don't know his last name. I never did know his last name.

Q. What do you know him as?

A. Burt. I only call him Burt.

Q. You said you sold him Vanderbilt tires and 1993 Bowers batteries on a stocking basis in 1953 and 1954. How did you bill—

A. Vanderbilt tires he didn't stock. Batteries he did. Mr. Kelaher: I think his testimony will show that he testified as he has now stated.

By Mr. Correa:

Q. How did you bill him? That is my point.

A. COD.

Q. Did you extend credit terms to any of your customers for tires or batteries?

A. Some few. Not many.

Q. Generally—

A. COD almost to everybody.

Q. Generally you deal on a COD basis?

A. Yes.

Q. Do you generally make the sale and delivery of the goods at the same time?

A. No. I will take the order and deliver later. Next day usually, if it is a stock item.

Q. Did you take any Bowers batteries back from Burt's Betholine station on the occasion in 1954, when you say—

A. I don't recall. I am quite sure I did not.

Q. He will be stocking them up to that time?



A. Yes.

Q. You say that Sariego—is that his name?

1994 A. Sariego is the way I pronounce it.

Q. —told you that he couldn't stock Lee tires? Had he been stocking them prior to the time he told you that?

A. No.

Q. So it was really—

A. Oh, he might have stocked two to four. Never more than four, maybe two at a time.

Q. You spoke of Joe Fotia. You said that you had a conversation with him in 1955. Was that after he had written Vanderbilt?

A. It was after he had written Vanderbilt.

Q. You went to see him because Vanderbilt put you in touch with him?

A. Yes, I did. But that was before 1955 on that call.

Q. In 1955 you say that Joe Fotia told you that he had on hand U. S. Royals and Armstrong?

A. I saw them.

Q. Was he stocking them, would you say?

A. Yes.

Q. And did you say—my note doesn't show—whether he told you where he purchased his U. S. Royals and Armstrong?

A. Did he say where he purchased them?

Q. Yes.

A. Yes. Burke-Savage.

Q. And he said he was threatened with a lease cancellation?

1995 A. Yes.

Q. You know he is still a lessee?

A. I know.

Q. You know he is still doing business with Burke-Savage?

A. I know it.

Mr. Correa: I have nothing further.

The Witness: And I sell him more now, too.

By Mr. Correa:

Q. What?

A. And I sell him more now, too. That has only been recently, though.

Hearing Examiner Kolb: Any questions, Mr. Thompson?

Mr. Thompson: Yes, sir.

Hearing Examiner Kolb: Proceed.

By Mr. Thompson:

Q. Mr. Scheiner, you have a number of business enterprises, haven't you, sir?

A. What are you referring to?

Q. Until 1955 didn't you own a bottling company?

A. Yes.

Q. Also, during the same period, weren't you a partner in a store enterprise? Grocery store?

A. Not during the same period.

Q. Not during the same period, but you are at the present time?

1996 A. No.

Mr. Kelaher: Your Honor, Mr. Thompson has asked me to fix dates throughout our examination. I think maybe we should have some dates fixed as to this bottling plant.

Mr. Thompson: The date was fixed; Mr. Kelaher. I will ask it more specifically.

By Mr. Thompson:

Q. You sold the bottling plant in 1955, about that time?

A. During 1955.

Q. Then didn't you go into the store business after that?

- A. No, I was never in the store business.
- Q. Never?
- A. That is, after that.
- Q. When were you in the store business?
- A. One of my partners bought the store.
- Q. So that you personally had no interest in it?
- A. That's right.

2011 HOMER AUGUST SANDER was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Kelaher.*

- Q. Will you please state your name and home address?
- A. Homer August Sander, Bayside Beach, Pasadena, Maryland.
- 2012 Q. Are you associated with the Bowers Battery and Spark Plug Company?
- A. I am the branch manager of the Baltimore division.
- Q. How long have you been with the Bowers Battery Company?
- A. Since 1949.
- Q. Did you begin with Bowers Battery here in Baltimore?
- A. In the City of Baltimore as a salesman on the street.
- Q. How long did you continue as an outside salesman?
- A. To 1952.
- Q. In 1952 what duties did you assume?
- A. Commercial sales.
- Q. When did you become the branch manager?
- A. 1954.
- Q. When did you cease being an outside salesman altogether?

A. February, 1952.

Q. During the period 1949 to 1952 did you call on trade in the Baltimore metropolitan area?

A. Service stations and garages.

Q. What products does your company sell?

A. Storage batteries.

Q. Do you have a full line, short line, or what type of line?

A. We have a complete line of batteries, Wet and dry storage batteries.

Q. How do the prices on Bowers batteries compare with the prices of other sellers of batteries in the metropolitan Baltimore area?

A. Well, we are much lower than a majority of the brands that are on the market due to our operation.

Q. Is Bowers Battery and Spark Plug Company a manufacturer?

A. We are a manufacturer.

Q. And this is a factory branch?

A. This is a company-operated branch.

2015 By Mr. Kelaher:

Q. During the period 1949 to date, and with respect to the metropolitan Baltimore area only, has there been an increase, decrease, or has the sales volume remained the same with respect to the sale of Bowers batteries by your branch to Shell service stations?

Mr. Thompson: My usual objection, sir, on behalf of Atlantic.

Hearing Examiner Kolb: It will be received subject to a motion to strike by Atlantic.

Mr. Thompson: That will stand for this entire testimony with respect to other oil companies?

Hearing Examiner Kolb: The objection will be as to all other oil companies, subject to a motion to strike by Atlantic.

By Mr. Kelaher:

Q. You may answer.

A. We don't have a Shell station on our books today.

Q. In 1949 did you have Shell stations on your books?

A. 1949 up to '53 we had some Shell stations. In fact—  
2016 Q. I show you Commission Exhibit 346 and ask you to state if you sold Bowers batteries to the Shell service station operator listed therein?

A. Myself, personally?

Q. The Bowers branch?

A. Yes, our salesman Mr. Dale sold Hooper batteries.

Mr. Correa: Can the date be fixed?

The Witness: I am not in a position to give you the date. I can't recall all those dates.

M. Kelaher: I think the dates were fixed this morning.

Mr. Correa: I want the date to be fixed by this witness as to the matters that he is testifying about.

By Mr. Kelaher:

Q. Was this during the period—

Mr. Correa: And I would prefer it not by leading, either, or suggestion.

The Witness: May I ask a question?

By Mr. Kelaher:

Q. No, you just answer the questions.

A. We can have a lot of fun.

Q. Do you know approximately when sales were made to Mr. Hooper?

A. Up to '53 they were being made to Hooper.

Q. During the period 1949 through 1955, inclusive, 2017 did your sales of Bowers batteries with respect to

Sinclair stations in the Baltimore area increase, decrease, or remain the same?

A. Sinclair —

Q. Sherwood stations?

A. They decrease. Whether Sherwood or Sinclair, it is still the same. It is another paint job on the station. It is still the same.

Q. Getting back to Shell, what was the percent of decrease with respect to Shell stations?

A. One hundred percent.

Q. What has been the percent of decrease with respect to Sherwood station?

A. One hundred percent.

Mr. Kelaher: No further questions, your Honor.

*Cross-Examination by Mr. Correa.*

Q. How about your sales to people with red hair; did they increase, decrease or stay the same in the period 1949 through '56?

Mr. Kelaher: Objection, unless their eyes are identified, too.

Hearing Examiner Kolb: The objection will be sustained.

Mr. Correa: I submit it is as relevant as anything else that has been introduced in the examination of this witness, if your Honor please.

2018 Hearing Examiner Kolb: I have ruled on the objection. Let's go ahead.

By Mr. Thompson:

Q. Mr. Sanders, there is one thing I don't understand about your method of distribution which I am sure was not brought out?

A. All right, sir.



Q. Back in 1949, '50 and '51, had your branch sold direct to service stations?

A. Yes, sir.

Q. Do you sell direct to service stations today?

A. We try to. But we are not having any luck.

Q. How many distributors do you have in the Baltimore area?

A. What do you classify as a distributor.

Q. Jobbers, wholesalers.

A. As far as I can recall, two.

Q. Who are they?

A. Baltimore battery and S&S tire.

2019 By Mr. Correa:

Q. Do you know how many Shell stations your distributors sell to?

A. No, sir, I do not.

Q. Do you know how many Sherwood stations they sold to during the period about which you testified—

A. No, I do not know what distributors sell.

May I finish my question please?

2020 A. May I answer—

Mr. Kelaher: No, just answer the questions.

The Witness: I would like to clarify one thing—

By Mr. Correa:

Q. Just a minute. You are on the witness stand and you are answering questions; you are not making speeches.

Please read the question interrupted by the witness.

(The reporter read the question.)

Q. (continuing)—1949 through 1955?

A. No, I don't.

Mr. Correa: Nothing further.

Mr. Kelaher: Nothing further.

Mr. Thompson: I move that all the testimony of this

witness with respect to Atlantic refining Company be stricken from this record.

Mr. Correa: And I make the same motion with respect to the respondent Goodyear.

Hearing Examiner Kolb: The motions will be denied.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: You may be excused.

(Witness excused.)

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: The hearing will be in order.

2021 RUSSELL H. EDRINGTON was called as a witness for the Commission and, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Kelaher.*

Q. Please state your full name and home address.

A. Russell H. Edrington, 3003 Linden Avenue, Towson, Maryland.

Q. Were you at one time an operator of a Sherwood service station?

A. Yes, sir.

Q. Where was the station located?

A. 41st and Falls Road.

Q. Baltimore?

A. Baltimore.

Q. When did you first enter the station?

A. May of 1951.

Q. Were you a lessee dealer?

A. Yes, sir.

Q. Were you on a one-year lease?

A. Yes, sir.

Q. Was your lease renewed automatically?

A. Automatically.

Q. When did you leave the station?

2022 A. May of 1954.

Q. Approximately how much money did you invest in the station?

A. \$3,000.

Q. When you entered the station, did you have any conversations with Sherwood representatives regarding TBA?

A. No. The only time after I had taken the station over they mentioned that—

Q. Who is "they"?

A. Mr. Cottman and Mr. Wagner. They just mentioned that my Goodyear dealer was Brooks-Huff. That was all that was ever said.

Q. After you entered the station, from whom did you purchase your tires?

A. From Burke-Savage, Lee Tire and Rubber, Plotkins Tire Sales.

Q. What brand of tires did you purchase from Burke-Savage?

A. U. S. Royal and the Armstrong tire.

Q. What brand of tires did you purchase from Plotkins?

A. Schenuit tires.

Q. Of course you purchased Lee tires, did you say?

A. Yes, sir.

Q. From whom did you purchase Lee tires? Do they have a branch in Baltimore?

A. No. It was just called Lee tire and Rubber, over here at West Franklin Street.

2023 Q. From whom did you purchase batteries?

A. From the Lee Tire and Rubber people.

Q. Is that known as the Lee battery, Lee brand?

A. Yes, sir.

Q. Did you purchase Goodyear tires from Brooks-Huff Tire Company?

A. The only time I purchased them, if somebody just specified they wanted the Goodyear tire.

Q. Did you purchase Goodyear batteries from Brooks-Huff?

A. Only if someone specified it.

Q. What was your reason for buying tires from Burke-Savage, Plotkins, and Lee, instead of from Brooks-Huff Tire Company?

A. I could get a better discount from them.

Q. What discount did you receive from Brooks-Huff on tires and batteries?

A. Two percent.

Q. Approximately what discounts did you receive from other sellers of tires?

A. Two, seven, five and seven.

Q. You mean two plus seven?

A. Two, five, and seven.

Q. Just so I get this straight, it would be two plus five plus seven, is that correct?

A. Yes.

Q. From whom did you purchase your accessories?

2024 A. Different jobbers. Belvedere Sales, R. J. Loock, R. W. Norris, Replacement Parts.

Q. Did you purchase any Goodyear accessories?

A. I never purchased any Goodyear accessories. Sometimes I would take in and maybe buy different polishes from him, but not much.

Q. From whom did you purchase your fan belts?

A. Goodyear.

Q. Which supplier?

A. Brooks-Huff.

Q. When did your lease terminate? When did you leave the station?

A. May, 1954.

Q. What was your reason for leaving the station?

A. They just terminated my lease, that was all. Just cancelled my lease.

Q. When did you first learn that your lease—when was the first time you had an indication that your lease was going to be cancelled?

A. A few months before I saw a couple of fellows walking around the station, looking around. I inquired and asked them what they were doing. And they said they understood the station was going to be up for lease.

Q. Had anyone from Sherwood mentioned the matter to you?

A. No, sir.

2025 Q. Did you contact anyone from Sherwood after—

A. Yes, sir. I called down the Sherwood Brothers.

Q. With whom did you speak at the Sherwood Brothers?

A. I think it was either Mr. Weller or Mr. Cottman. I don't know which one it was.

Q. What was the substance of your conversation?

A. They just said that they didn't know anything about it.

Q. That is—

A. Mr. Cottman and Mr. Weller said they didn't know anything about the lease being terminated?

Q. Thereafter, did you receive a notice of termination of your lease?

A. I guess about the first week in May.

Q. What did you do after you received the lease-termination notice?

A. I called down on the Sherwood Brothers and asked them for an interview and they granted one.

Q. Who were present at the interview?

A. Mr. Weller, Mr. Cottman, and Ray Evans.

Q. Would you please state the substance of the conversation that took place during that interview?

A. They just told me the reasons—

Q. State who told you what.

A. Mr. Weller is the one who did most of the talking. He stated that the reason the lease was being terminated is that my gallonage was down and that the TBA sales were down.

Q. What record of TBA sales would be in his possession?

A. The only thing that would be what they got from Brooks-Huff.

Q. Would they have any record of your sales of TBA products purchased from other suppliers than Brooks-Huff?

A. No, sir.

2027 By Mr. Kelaher:

Q. From the time you began the station operation in May of 1951, what was your gallonage at or about the time you began operation?

A. 12,000.

Q. Did you increase or did your gallonage decrease until May, 1954?

A. It kept increasing every month. It went up to 16,000 and a few months I would run 18,000.

Q. With respect to your TBA sales, beginning in May, 1951, when you first started operation, did your TBA sales volume of both sponsored and non-sponsored products increase, decrease, or remain the same?

A. They increased all the time.

Q. Had you developed customer good will in your area?

A. I think so.



Q. Was your operation a profitable operation?

A. Yes, sir.

Q. At the termination of your lease, what happened to your stock, if any, of Lee tires?

A. They picked them up. They took them back, the Lee tire and Rubber people, what I had left they took back.

Q. What happened to your stock of Schenuit tires?

A. The same. Plotkins took them back, and Burke-Savage.

Q. And U. S. and Armstrong—

2028. A. Was taken back by Burke-Savage.

Q. Who was the incoming dealer?

A. Donald Patterson.

Q. Did you request him to purchase your stock of Armstrong tires?

A. Well, I asked him did he want to take them and he said No, that he would rather not.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Cross-examination.

Mr. Correa: May we take a moment, your Honor, to check?

Hearing Examiner Kolb: Yes.

Mr. Correa: May we have a few minutes recess?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will be in order.

*Cross-Examination by Mr. Correa.*

Q. Mr. Edrington, you started in May—as a lessee, that is—1951?

A. Yes, sir.

Q. And your first lease was from May, 1951 to May, 1952, is that correct?

A. Yes, sir.

2029 Q. Did you have a partner at that time, Mr. N. G. Bassler?

A. Yes, sir.

Q. Then your partner left you, did he?

A. He had another station of his own.

Q. I meant the partnership dissolved?

A. Yes.

Q. In March, 1952?

A. I guess it was somewhere around there. I just couldn't tell you when it was.

Q. You did have a lease, didn't you, in your name alone, without Mr. Bassler?

A. The first lease was in Mr. Bassler's and my name.

Q. And then I note there is a short lease from March, 1952 to May, 1953, to B. H. Edrington alone.

A. Yes, sir.

Q. And then you obtained a new lease in May, 1952 which ran to May, 1953?

A. Yes, sir.

Q. Then a final lease from May, 1953 to May, 1954?

A. Yes, sir.

Q. Do you know how your gallonage figures compared with those of your successor in that station?

A. I think I was doing better than he was, as far as I know.

Q. You don't actually know the figures?

2030 A. No, I don't know the figures, no sir.

Q. Do you know how your gallonage figures for the first five months of your last year, which was 1954, compared with the first five months of 1951, when the station was operated by Mr. Hensly—is that correct?

A. Hensly—Albert Hensly.

Q. Is that H-i-n or Hen?

A. Hensly.

Q. Do you know how they compared?

A. No, I don't. I have never compared figures with nobody.

Q. Would it surprise you, sir, if I told you that according to our records Mr. Hensly's gallonage for the first five months of 1951 was 83,000, and yours for the first five months of 1954, 72,000?

A. I couldn't tell you. I don't know the figures.

Q. You never did know those figures?

A. No, sir.

Mr. Kelaher: Your Honor, I think the witness has testified that he didn't know the figures. I am going to object to any comparison of figures of which he has no knowledge.

Mr. Correa: I am asking questions, counsel.

Mr. Kelaher: He answered the question.

Mr. Correa: So? Where do we go from there?

Hearing Examiner Kolb: Proceed.

2031 By Mr. Correa:

Q. Would it surprise you to know, sir, have you ever heard, that Mr. Patterson—that was your successor?

A. Yes, sir.

Q. —Mr. Patterson's gallonage for the first five months of 1955 was 83,000, as against your 72,000 for the comparable period of 1954?

A. It could be. Like I say, I don't know any figures.

Mr. Correa: Thank you very much.

Mr. Ballard: Your Honor, I assume this is received subject to Atlantic's motion to strike?

Hearing Examiner Kolb: The testimony will be received, subject to a motion to strike by Atlantic.

Mr. Ballard: Thank you.

Hearing Examiner Kolb: No further questions?

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: You are excused.

(Witness excused.)

Mr. Kelaher: Your Honor, we have decided to terminate our witnesses as of now and don't propose to call the next witness in order to expedite proceedings.

Hearing Examiner Kolb: Let the record show that Charles E. Shutter is excused.

2033

Room 332  
Federal Trade Commission  
Washington, D. C.  
26 November, 1957

Met, pursuant to adjournment, at 11:05 a.m.

2034 Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: I would like to call Mr. Edwards.

Mr. Correa: Your Honor please, before this witness is sworn, I should like to put this, I hope brief statement, in the record. We have been put on notice of certain facts which indicate to us that if the present plans of counsel supporting the Complaint in this case and in another case are carried through, we will be deprived of a fair hearing within the significance of that term, under the Administrative Procedure Act as well as the appropriate authorities defining our right to a fair hearing.

The facts to which I allude are substantially these: As I understand it, this witness and he may be only an example of this procedure, I don't know that, I can only speak of the facts of which I am now on notice officially; this witness, Edwards, is to be called to testify in this case and also this afternoon, I am told, in the Shell-Firestone Case, also being heard by your Honor as trial examiner on the identical issue in each case, the issue being an issue of

fact as to the nature and operation of the Shell-Goodyear Sales Commission Plan, which is that issue in each of these two cases.

Now it seems to us, if your Honor please, that is the situation which is, if one may call it that, pregnant with error because it seems to us that once this witness 2035 testifies on the identical factual issue in this other case where we are not present, where his testimony is as to us in every technical sense wholly ex parte, as much as if your Honor were to take his testimony in your Honor's Chambers, we have been seriously prejudiced and we feel indeed prejudiced to the point where we have been denied some of the essential prerequisites of a fair hearing as contemplated by Section 7 and 8 of the Administrative Procedures Act.

I have in mind, among other requirements, particularly Section 7, Sub-division C, which reads in part, "Every party shall have a right to present his case by defense of oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts."

Now obviously we can have no cross-examination of this witness as to what testimony he may give on the issue in our case, mind, your Honor, in this other hearing before your Honor this afternoon. And similarly, we have no opportunity—

Hearing Examiner Kolb: (Interposing.) Since you are not a party to the other case, it would not affect you.

Mr. Correa: If your Honor please, with great respect, that is not entirely true. I speak in this brief outline of argument because I am not going to argue the point extensively, as trial examiner, I'm not speaking of your Honor individually or personally, but simply of the general- 2036 ity of hearing officers or trial examiners and it seems to me it is completely unrealistic to suppose

that whatever consciousness, and I am sure your Honor and all the other examiners of this agency bring to their appointed task the highest possible degree of consciousness, but with whatever consciousness, I do not see how realistically a trial examiner can so compartmentalize his mind as to separate out in it the impressions he gains of the witness, of his testimony, of his credibility, all these things in one hearing, and apply that only in one case, and do similarly in another hearing where the witness testifies in each case on the identical issue, identical factual issue is involved in each case.

Now, if your Honor please, it seems to us this contemplated procedure, as I say, does deprive us of substantial rights and we feel it is our duty to note that fact on the record at this moment because it is precisely at this moment that we are for the first time on official notice that this procedure is being followed and accordingly, we do note it and will, of course, make such appropriate motions and objections as whatever ensues in these proceedings may warrant, but I think our duty is clear and plain to note what is happening before it happens and while there still exists opportunity to remedy it.

2037 WILLIAM E. EDWARDS was called as a witness for the Commission and, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Kelaher.*

Q. Will you please state your name and home address?

A. William E. Edwards, 1108 North Seventh Street, Terre Haute, Indiana.

Q. Mr. Edwards, were you at one time an employee of the Shell Oil Corporation?

A. Yes, sir.



Q. And during what period were you employed by the Shell Oil Company?

A. 1947 to 1954.

Q. What was your employment in 1947, when you first became an employee?

A. I started on a transport truck hauling gasoline and then I went to sales representative in 1950.

Q. 1950, and what was your marketing or your sales area?

A. The first sales area I had was in Green and Owen, about three counties down there, Bloomfield primarily was the home town, along with Bloomington, Bedford, Linton, Jasonville, and in that territory I had 15 stations. And

I served that territory possibly six months.

2038 Mr. Correa: Could I have the latter part of that answer read back please; I missed one word about how many stations.

The Witness: Fifteen.

Mr. Ballard: Do I understand this entire territory is in the State of Indiana?

The Witness: All in the State of Indiana.

By Mr. Kelaher:

Q. Your territory was in the State of Indiana?

A. Yes.

Q. Of your 15 accounts, do you know approximately how many were so-called "L" stations?

A. Approximately there were seven "L's" and four "DL's" and four "OD's".

Q. How would you describe what an "L" station is in the Shell?

A. In the Shell organization, an "L" station is primarily the station that you do the most or put more efforts forth. It is a station that carries a lease and a sales agreement.

Q. Who owns the property?

A. Shell Oil Company, ordinarily.

Q. And is it a type of station which is used to lease to a lessee dealer?

A. It is leased to a lessee dealer, right?

Q. Would you please define a "DL" station?

2039 A. A "DL" station is what it says, a dealer lease.

It is a station that you have a man in who is operating it as a dealer, leased to Shell and Shell leases back to the dealer, it is a three-party deal.

Q. And does the Shell enter into the same type of lease agreement with "L" dealers as with the "DL" dealers?

A. No, sir, I would say, no.

Q. What is the difference?

A. The difference?

Q. In the lease, if you know.

A. On the "DL's" you have what is called a ground lease, and it is, for a longer period of time. A "DL" station is ordinarily ten years with a five year option. Where an "L" station has a lease that goes year to year, cancellable at the end of each year 30 days prior to the ending date.

Q. Aside from the terminal lease, is the same type of lease entered into?

A. You mean "DL"?

Q. "L" and "DL".

A. Primarily the same sales agreement and the basic lease.

Q. To what does the sales agreement refer?

A. The sales agreement is for product that is sold through the unit, like Shell gasoline and motor oil.

Q. Now, and you mentioned "OD" dealers, what is an "OD" dealer?

2040 A. An open dealer account is a small station out in a small town highway, you know, out on the high-

way. It could be any station where a man owns his property and Shell puts in the pumps and tanks, and they give him ordinarily a year lease from three to five years, depending on how it is set up, and it is also cancellable at the end of each year.

Q. When is the "L" lease cancellable?

A. "L" lease cancellable at the end of each year.

Q. May it be terminated any time prior thereto?

A. 30 days prior to the ending date of that year.

2041 Mr. Kelaher: Let me rephrase the question. For how long were you in your first territory?

The Witness: Approximately six months.

By Mr. Kelaher:

Q. At the end of that time—

A. (Interposing.) My territory was increased to about 13 counties or 46 accounts.

Q. And what was your capacity in your first territory and now in your second territory of Shell, what was your title?

A. Sales representative.

Q. And I will go into that a little later but approximately how many accounts were in your second territory?

A. This is included in the first group, total number, approximately 18 "L's", 14 "DL's" and 14 open dealer accounts.

Q. That is a total of 46 accounts?

A. Right.

Q. Now, that was just an explanation of your first territory?

A. Explanation of first territory, yes, sir.

2042 Q. Now, was there anytime thereafter when there was a change in your territory?

A. After about a period of a year, that territory was

taken over by another party, it was split and I was moved into a three county area around Terre Haute, which was Vigo, Clay, and Parke Counties. I had 20 stations up until the last six months before my resignation and then I had 21, and these included three "L's" and 4 open dealer accounts. That was the Terre Haute area.

Q. As I understand your testimony, you had 20 accounts until within six months of your—

A. (Interposing.) and then—

Q. (Interposing.) And then you had a—

A. (Interposing.) Then we got the first "C" station in that area.

Q. How long did you remain as an employee of Shell?

A. I remained then until May 16, 1954.

Q. What were your duties as a Shell sales representative in these three territories?

A. Well, my first duties primarily was the sale of gasoline and motor oil and Shell specialties, and I was sort of—I overlooked the territory, that is, the stations in the territory, examined them, examined their accounts and made adjustments where adjustments were needed. We

would usually look around the stations for, oh, dirty 2043 stations, we would see what their oil ratio was, we

would see how their Shell specialties were moving, check tires and batteries and accessory stock, see how they were moving, and establish Goodyear car and home accounts, where a man had enough capital to handle that, and we would collect rents for the Credit Department on occasions when the dealer didn't send his rent in, that is about the generalities of the job.

Q. And what line of TBA does Shell sponsor in your area?

A. Shell sponsors Goodyear tires and batteries.

Q. And in what district was your sales area located?

A. The last one?

Q. Yes.

A. That was round Terre Haute.

Q. I mean, well, let me ask you this, in what division?

A. Evansville district, Indianapolis division.

Q. Evansville district?

A. Indianapolis division.

Q. Do you know what territory the Indianapolis division comprises?

A. It comprises the State of Indiana and part of Kentucky.

Q. Do you know how many districts are in the Indianapolis division?

A. At that time, there were four districts.

Q. Would you name them please?

A. We had Evansville, Louisville, Indianapolis and Fort Wayne.

2044 Q. Do you know what TBA was sponsored by Shell in the Indianapolis division?

A. Goodyear tires and batteries.

Q. And accessories?

A. And accessories.

Q. Now, I wonder if you could describe the organizational set-up of the Indianapolis division and the Evansville district?

A. The organizational set-up? We had a division manager who was Mr. Mueller; we had a sales manager by the name of Mr. Barney Hynes, I believe, and working with those, we had a J. B. Jackson, who was a merchandising manager—

Q. (Interposing.) Were these men at the division office?

A. Division office, and then we also had a real estate department which I can't—oh, yes, Mr. Hamilton, he was over real estate, that was at the division office.

Then, at the district level, we had Mr. Pavey, who

worked directly under the sales manager and division manager.

Q. What was his name?

A. Pavey.

Q. Where was his office located?

A. Evansville. Under Mr. Pavey, in the last year and a half I was with them, we had a sales supervisor, Mr. Jessup, and we had two jobber salesmen and three district sales representatives.

2045 Q. Now, who was your immediate supervisor?

A. My immediate supervisor, I would say, was Mr. Pavey.

Q. Who was his immediate supervisor?

A. I would say Mr. Hynes and Mr. Muller. Along there, depending on what kind of problems came up, he would discuss with the real estate head and the merchandising head.

Q. What was Mr. Pavey's relationship with respect to Mr. Jackson at the division office?

A. Mr. Jackson was the merchandising head and discussed certain merchandising problems along TBA lines with the district manager who handed them down to me.

Q. Was Mr. Jackson—

Mr. Correa: (Interposing.) May I have that answer read please?

(The reporter read the record as requested.)

Mr. Correa: I object to him testifying to any discussions at which he was not present. Maybe he was present, if he was, let him say so.

Hearing Examiner Kolb: Read that answer again please.

(The reporter again read the record as requested.)

Hearing Examiner Kolb: Objection will be overruled.



By Mr. Kelaher:

Q. Then Mr. Jackson was the merchandising manager in charge of TBA, was that correct?

A. I would say that was one of his duties.

2046 Q. And Mr. Hynes was the—

A. (Interposing.) Sales manager.

Q. Division sales manager?

A. Yes, sir.

Q. Would that be in charge of all products including TBA?

A. Including TBA, he was in charge of all products.

Q. How often would you have contact with Mr. Pavey?

A. That depends on the problems that arise out of the territory. We always had a sales meeting once a month, and then Mr. Pavey visited the territory possibly every ten days to two weeks, and write and discuss the territory problems as the year progressed.

Q. Was Mr. Pavey the district manager during this entire period when you were district sales representative?

A. Yes, sir, he was.

Q. Did you ever have any discussions with Mr. Pavey concerning TBA?

A. Yes, sir, that came up quite often.

2048 By Mr. Kelaher:

Q. Now, do you recall any specific or any conversations relating to specific service stations which you had with Mr. Pavey concerning TBA? You can answer yes or no.

A. Yes.

Q. Now, would you please designate the stations, the approximate dates of the conversations and the substances of your conversations with Mr. Pavey?

Mr. Correa: If your Honor please, I must object first

to this form of interrogation; this business of asking for conversations, can't we have them one at a time so there is opportunity—

2049 Hearing Examiner Kolb: That is what he is asking for.

Mr. Kelaher: That is right.

Mr. Correa: I understood it would be conversations.

Mr. Kelaher: If there is more than one dealer involved.

Mr. Correa: If the witness is being asked to give one answer to a series of conversations, I object to that form of interrogation. I submit that is what the question calls for. I also object to the question as calling for hearsay.

Hearing Examiner Kolb: The objection is overruled.

Mr. Kelaher: You may answer.

The Witness: Well, we had several cases. One station at Brazil, Indiana. James Cagle, a dealer, Mr. Cagle would sell Kelly tires over there and I was constantly trying to get him to sell Goodyear's which I always had a problem there and never did get the job done, even though he would have competitive advertising in the station and I failed miserably in getting Goodyear's in there.

Mr. Correa: I move to strike all the answer.

Mr. Kelaher: I want the substance of your conversation with Mr. Pavey?

The Witness: These conversations, first of all, I want to say, they may have been in a sales meeting, in the 2050 car riding from town to town, but not at the station.

Mr. Pavey would say, "Bill, how about getting some Goodyear tires in? What are we going to do about this?" And I would say, "I don't know unless we change dealers." He would say, "If you can't get Goodyear tires in there, maybe you better start looking for another dealer."

\*       \*       \*       \*

By Mr. Kelaher:

Q. Do you recall the approximate date of that conversation or dates?

A. That was the year of '53, we had several discussions on that dealer, three, four or five—I would say four.

Q. Now, I just want you to tell me what Mr. Pavey told you with respect to any other discussions you had concerning specific dealers, just the conversations?

Mr. Correa: I object to the form of the question, if your Honor please. I submit we should have these conversations one by one and not all jumbled up with the witness' guesses, speculations and problems and all the other things he has mentioned.

2051 Hearing Examiner Kolb: Objection will be overruled.

By Mr. Kelaher:

Q. Go ahead.

A. At another station which was Morlan Shell Station, we had Goodyear tires in that station, but he also carried a competitive line.

Q. Just tell us the conversation you had with Mr. Pavey, if any, concerning that situation.

A. The conversation.

Q. Your conversation with Mr. Pavey?

A. The instruction was to try to get Goodyear tire and batteries in there and no other competitive line.

Q. What do you mean by competitive line; you have used that several times?

A. Competitive line is another tire besides Goodyear.

Q. Would that apply also to batteries and accessories?

A. That would apply also to batteries and accessories.

Q. Now, approximately when did that conversation take place and where?

A. That was Brazil, Indiana, in 1953.

Q. Now, do you recall the names of any other specific dealers with whom you discussed with Mr. Pavey concerning TBA; just answer Yes or No.

A. Yes.

Q. Now, please just state the conversation with 2052 Mr. Pavey and state that first, and then we will get to the time?

A. On another location?

Q. If any, yes, sir.

A. We had a problem at Fortin, Shell, Brazil, he sold Armstrong tires. And Mr. Pavey said, "Do your utmost to get Goodyear tires in there," which I attempted to do.

Q. When was the approximate date of that conversation?

A. 1953.

-By Mr. Kelaher:

Q. Did you receive instructions concerning TBA from your supervisors? You can answer Yes or No.

A. Yes.

Q. Were they given to you orally or in writing?

A. They were given to me orally.

Q. What were those instructions?

2053 A. "You are to sell Goodyear tires, batteries and accessories in all Shell units."

Mr. Correa: I move to strike the answer unless the time, place, and circumstances of these alleged oral instructions are stated.

Mr. Kelaher: Did these instructions apply during your employment as a sales representative for Shell?

A. The Witness: Yes, sir, in meetings between me and Mr. Pavey in his district office, not one time, but, oh, probably four times in the four years I was sales representative, has specifically designated that I put Goodyear tires in all accounts that had competitive lines in there.

By Mr. Kelaher:

Q. Now, did you ever have discussions with Mr. Hynes or Mr. Jackson concerning TBA at the division level?

A. At the division level, in one year-end meeting in 1953, we had a yearly meeting every year to discuss the problems of each service station, and in one meeting I remember I was up before the gentlemen discussing my stations—

Q. Which gentleman?

A. Mr. Hynes and Mr. Jackson, and the tire business at that station was down a certain percentage.

Q. Would you identify the station, please?

A. That was Cagle's Shell at Brazil, and Mr. Hynes and Mr. Jackson together, asked me one question at 2054 a time. Now, one of them would say, "What are you going to do with this fellow?" And I would say, "Looks like I am going to have to start looking for a dealer." And then the other one would say, "Why can't you get tires in there, Goodyear tires," and, in fact, then they would say, "Well if he won't sell our tires," he said, "Start looking for a dealer and replacement."

Q. And who made that statement, Mr. Hynes or Mr. Jackson, or both?

A. They were both asking me questions; I can't pin it down to which one said it, but I do know Mr. Hynes told me to get rid of the dealer.

Q. Now, in the course of your duties as district sales representative, did you have conversations with Mr. Cagle at Brazil, is that it?

A. Brazil.

Q. Brazil, concerning TBA? Just answer Yes or No.

A. Yes.

Mr. Correa: May I have that question read; I want to be sure I understand it.

(Question read.)

Mr. Correa: I don't know what the Brazil is in this context.

The Witness: A town in Indiana.

Mr. Correa: Well, I suppose the question has been asked, but I submit that counsel should not lead this 2055 witness on this phase of the testimony.

Hearing Examiner Kolb: He is simply getting down to specific cases.

Mr. Correa: I think the witness ought to think of specific cases, not counsel.

Mr. Kelaher: I just asked him to answer Yes or No.

By Mr. Kelaher:

Q. You said Yes?

A. Yes.

Q. Now, would you please give us the approximate date or dates of conversation and the substance of the conversation you had with Mr. Cagle?

A. June of '53, I went in and talked to Mr. Cagle about putting in a Goodyear tire stock which he told me that he couldn't see doing because of the gasoline business he was getting out of the Kelly dealer, and I thought that his gallonage and oil ratios were sufficient not to argue about Goodyear tires because at that time I couldn't find a dealer to replace him; so, I let it drop at that.

Q. Do you recall what you specifically said to Mr. Cagle concerning this matter?

A. I did tell Mr. Cagle he would have to remove competitive signs and competitive tires or I would have to effect cancellation of his lease.

Q. Now—

2056 Mr. Correa: Will you mark on the record the last question and answer and the preceding one; we may wish to refer to them at the close of the testimony.



By Mr. Kelaher:

Q. Did you at one time have a station in your territory operated by a Mr. Bartl? Answer Yes or No.

A. B-a-r-t-l; yes sir, I had a dealer by that name.

Q. Where was the dealer located?

A. Ninth and LaFayette, Terre Haute, Indiana.

Q. Did you have any conversations with Mr. Bartl concerning TBA? Answer Yes or No.

A. Yes.

Q. Now, would you please state approximately when such conversation or conversations took place and the substance of the conversation?

A. That was June of '52.

Mr. Correa: I object to the substance of the conversation, if your Honor please; it is hearsay and not coming within any of the exceptions to the hearsay rule.  
2057 Hearing Examiner Kolb: Objection to hearsay will be overruled. I think the witness should be asked to give the conversations without just the substance.

Mr. Kelaher: Try to give the conversations as accurately as possible that you had with Mr. Bartl?

The Witness: In his tire sales I would find out that he would be selling maybe a set of Firestone or a set of U. S. Royal tires, and I would tell Jim that he couldn't do that, that he should sell Goodyear tires. And he said that he was going to sell the tires the customer wanted and I said, "Well, it is my job to see that you do try to sell Goodyear's and carry a larger stock and if this isn't done, I will have to replace you eventually if you don't get some Goodyear tires in here."

Mr. Kelaher: When you refer to Jim, were you referring to Mr. Bartl?

The Witness: Right.

By Mr. Kelaher:

Q. Is Mr. Bartl still a Shell dealer, do you know?

A. No, sir.

Q. Was he, what class dealer was he?

A. He was an L dealer.

Q. Now, did you at one time call on a Mr. Garzolini?  
Answer Yes or No?

A. Yes, sir.

2058 Q. Where was Mr. Garzolini stationed?

A. Seventeen and Popular, Terre Haute, Indiana.

Q. And did you have any conversations with Mr. Garzolini concerning TBA, answer Yes or No?

A. Yes, sir.

Q. Now please state the approximate day of the conversation and as accurately as possible, describe the conversation?

A. August of '51, I found thermoid belts and hose in Mr. Garzolini's station, and I told Mr. Garzolini that we would have to put in Goodyear hose and belts, and he agreed with me, so we sold down his belt line except the bad numbers that we couldn't sell and returned those to a local jobber and we had the Goodyear salesman come out and put up new racks, and send him in hose and belts. He was already handling Goodyear tires and a few batteries, some Delco's, and I made him take those out, and handle strictly Goodyear all the way through the line.

Mr. Corbett: I move to strike all of the answer except so much as refers to the conversation as unresponsive.

Hearing Examiner Kolb: Motion will be denied.

By Mr. Kelaher:

Q. Did you at one time call on a Shell service station dealer by the name of Godfrey; answer Yes or No?

A. Yes, sir.

Q. Would you please state where that station was located?

2059 A. Ninth and LaFayette, Terre Haute, Indiana.

Q. And did you have any conversations with Mr. Godfrey concerning TBA; answer Yes or No?

A. Yes, sir.

Q. And would you please state the approximate time, date or rates of conversations, that is, as accurately as possible, the substance of the conversation?

A. That was in March of '53, and I found U. S. Royal tires displayed out in front of the Shell unit and I told Mr. Godfrey to remove the tires and put in some Good-years, which he flatly refused, and I told Mr. Godfrey that these things that he was doing was not Shell policy, and that at the end of the year, if he didn't put in some Good-year tires and push Goodyear products, we would give him a lease cancellation.

Q. You stated earlier that you had one "C" station in your territory for a period, is that correct?

A. Yes, sir.

Q. What was the name of that dealer or dealers and where was the station located?

A. That was Robinson and Short Shell Station at 22nd and Wabash, in Terre Haute.

Q. Would you state what a "C" station is in the Shell set up?

A. A "C" station means company operation primarily. A "C" station is a station where the dealer doesn't own the gasoline, the gasoline is consigned to him, but  
2060 he owns all other products including oil, specialties, accessories, tires and batteries, equipment, lubrication equipment, hand tools, coke boxes; he owns all of that, but he doesn't own the gasoline; it is consigned.

Q. Now, you say he owns all that, does he also purchase the TBA stock in the station?

A. Right, he uses his own money to purchase everything except the gasoline.

Q. What were your instructions with respect to the brand of TBA to be carried in "C" stations?

Mr. Correa: I object, your Honor please, unless that is made somewhat more specific.

Hearing Examiner Kolb: Objection is overruled.

Mr. Kelaher: Answer.

The Witness: A "C" station is as I said, a company station, and it is a must that they carry Goodyear tires and batteries and accessories. In fact, you don't even have to ask the question, you just put them in or you don't accept the dealer as a Shell dealer.

Mr. Correa: If your Honor please, I move to strike the testimony and, indeed, all testimony relative to the so-called "C" stations as they are described by the witness. In this connection, I respectfully direct to your Honor's attention the wording in paragraph nine of the complaint herein, which says, speaking of the so-called other oil companies:

"Said oil companies exercise control over the service stations and distributors which purchase their petroleum products in the same manner and for the same reason as here and above alleged as to Atlantic."

I call your Honor's attention that the witness is now testifying about service stations that do not purchase petroleum products from any oil company, if I understand his testimony correctly.

Hearing Examiner Kolb: The motion to strike will be denied.

That is all right.

By Mr. Kelaher:

Q. Mr. Edwards, what type of service station identification appears in Shell stations in your territory? I am talking now about window valances and outdoor signs?

Mr. Correa: Will the territory be identified.

Mr. Kelaher: With respect to TBA.

Mr. Correa: Will the territory be identified. He has testified about a couple of territories.

Mr. Kelaher: During the period you were employed by Shell or based on your own knowledge, if you know today, what service station identification with respect to TBA appears in Shell service stations?

The Witness: I would say all Shell stations in all the territories identified, that includes all of them, all of the modern units.

2062 A modern station is a one bay or two bay with porcelain or built out of brick. They all have Good-year window advertising.

By Mr. Kelaher:

Q. Did you have any instructions concerning advertising of non-sponsored TBA in Shell service stations? Answer Yes or No.

A. Yes, sir.

Q. And what were your instructions?

A. Instructions were that if non-sponsored advertising was exhibited in these stations, it was to take them down.

Mr. Correa: If your Honor please—

Hearing Examiner Kolb: We don't know yet how those instructions were received.

Mr. Kelaher: From whom were those instructions received and how?

2063 The Witness: I was told by my sales supervisor, Mr. Jessup, or district manager, Mr. Paney, to re-

move all signs, to get a ladder, climb up and take them down.

By Mr. Kelaher:

Q. You referred earlier to a Mr. Cagle. Did Mr. Cagle have advertising other than Goodyear in his station?

A. Yes, sir.

Q. Did you have any conversations with him concerning such advertising? Answer the question Yes or No.

A. Yes, sir.

Q. Would you please state as accurately as possible the conversation you had with him concerning the matter and the approximate date of the conversation?

A. 1953, Mr. Cagle had Kelly tire stands with Kelly tires in front of the station. I told Mr. Cagle the same as I told prior, that he would have to get rid of those, or eventually, he would have a lease cancellation.

Q. Did you receive instructions concerning check-outs from Mr. Paney or Mr. Jessup?

A. I handled—

Q. Answer Yes or No?

A. Yes.

Q. And were those instructions given to you orally or in writing?

A. Those instructions were orally.

2064 Q. And what were those instructions with respect to TBA?

Mr. Corra: Now, if your Honor please, I object unless it is established which of these two gentlemen it was that gave the instructions. The witness was asked if he was given instruction by Mr. "A" or Mr. "B," and he said Yes. I still don't know which one it was.

By Mr. Kelaher:

Q. Would you specify whether Mr. Paney or Mr. Jessup or both gave you such instructions?



A. This is kind of confusing right here. If we were putting in a dealer, is this what you want?

Q. Just follow the questions.

Did Mr. Paney give you oral instructions concerning check-outs?

A. Dealer check-outs, No.

Q. Did Mr. Jessup give you oral instructions?

A. No.

Q. Did anyone in the Shell organization give you oral instructions concerning check-outs?

A. Our merchandising representative gave me oral instructions at one check-out.

Q. What was his name?

A. Bill Welde.

Q. And you say at one station, what was the station involved?

A. That was a station at Ninth and LaFayette, 2065 Terre Haute, Indiana.

Q. Who operated that?

A. Jim Bartl.

Q. What were your instructions?

A. My instructions were to obtain another dealer and place him in that unit.

Q. And what were your instructions with respect, if any, to the purchase of products in that station by the incoming dealer?

A. The incoming dealer had to purchase a supply of gasoline and motor oil, specialties, Goodyear tires and fan belts and accessories, which I seen to it that he had the proper product to sell gasoline, oil and tires.

Q. Were any newly built stations opened in your territory during your period of employment by Shell?

A. Yes, sir, there was two.

Q. And do you recall the names and addresses of those stations?

A. Yes, sir.

Q. What were they?

A. A. Earnest Laybold at Wabash and Oakland, Terre Haute, Indiana, a "DL" station was opened; boy, that is a tough one, June of '53. That is right, June of '53.

Q. You mentioned two; what was the name?

A. Then, the other station was the Shell station at 22nd and Wabash Avenue, Robinson and Short, which was opened October 1st, '53.

2066 Q. What brand of TBA was stocked by these newly built stations?

A. I placed the Goodyear line completely in both of them.

Q. Did you receive instructions from your superiors concerning the stock of TBA to be placed in newly built stations? Answer Yes or No.

A. Yes, sir.

Q. And who gave you such instructions? Just the name, if you recall.

A. Well, I can't say just exactly the name.

By Mr. Kelaher:

Q. What was your policy as a Shell district sales representative with respect to TBA to be placed in newly built Shell stations?

Mr. Correa: I object as calling for completely immaterial testimony. I don't think what the witness's policy was matters to us in this proceeding at all.

Mr. Kelaher: I asked him as a Shell representative, an employee.

Mr. Correa: Asking him for instructions is another matter. I submit this is an attempt to evade your Honor's ruling.

2067 Hearing Examiner Kolb: Objection will be overruled. Preliminary question.

By Mr. Kelaher:

Q. Go right ahead.

A: Which question.

Mr. Kelaher: Read the question back.

(Question read.)

The Witness: My policy was to place Goodyear tires and batteries in the stations and both the stations that were put in business that year, I placed Goodyear tire-battery-accessory racks for both stations and put Goodyear tires and batteries in.

Mr. Kelaher: And accessories?

The Witness: And accessories.

By Mr. Kelaher:

Q. Did you discuss the matter with these two dealers before you put the Goodyear and TBA stock in to these stations?

A. Yes, sir.

2068 By Mr. Kelaher:

Q. Did Shell have a policy concerning TBA with respect to newly built stations? Answer Yes or No?

A. Yes, sir.

2069 By Mr. Kelaher:

Q. Was Shell's policy established in writing or orally?

A. Orally..

Q. And who was the person who stated Shell's policy orally to you?

A. Oh, the tire business at this new station, Mr. Welde and I wrote up that order, and we wrote up the tire order for that station, which amounted to about \$1,200.

Mr. Correa: I move to strike the answer as unresponsive to the question. The question called for a name, who?

The Witness: Mr. Welde.

Hearing Examiner Kolb: Objection overruled.

By Mr. Kelaher:

Q. And I believe you referred to Mr. Welde previously; was he from the Indianapolis Division?

A. He was from the Evansville District.

Q. Evansville District?

A. Merchandising representative.

Q. Now, will you state as accurately as possible your conversation with Mr. Laybold, prior to his entering the station with respect to TBA?

A. I told Mr. Laybold that he was to put Goodyear tires and batteries in, as it was a company policy, and Mr. Laybold went along and he put them in.

Q. Now, will you please state your conversation  
2070 with Mr. Robinson prior to the time he entered the station with respect to TBA?

A. Mr. Robinson, I done the same thing; I told him if he would buy a stock of Goodyear tire and battery and home accessories—which Mr. Robinson did.

Q. Did you state to Mr. Laybold who his Goodyear and  
TBA supplier would be?

A. Yes, sir, Mace Service, Indiana.

Q. Did you state to Mr. Robinson who his Goodyear  
TBA supplier would be?

2071 A. Yes, Mace Service, Terre Haute, Indiana, is the supplier.

Q. Now, do Shell Oil Companies issue credit cards?

A. Yes, sir, they have quite a number of credit cards.

Q. Did you receive any instructions concerning TBA  
to be honored on Shell credit cards? Answer yes or no.

A. Yes.

By Mr. Kelaher:

Q. When did this written instruction sheet come out, do you recall?

A. That policy had been a policy for all of the time that I was Sales Representative, but it was streamlined and made bigger where they could purchase on a card more money and a credit payment plan with no interest, I believe it was in about February of '53.

2072 Q. At any time, Mr. Edwards, did you receive oral instructions concerning use of Shell Credit cards?

A. No, sir.

Q. Shell Oil credit card instructions were embodied in written instructions?

A. This particular thing we are talking about that I discussed came out as a written statement.

Q. Did you have any instructions made orally prior to the time this written instruction came out.

A. We did, Jessup, Johnnie Jessup and I had a discussion orally about credit card time payment plan. It was a question back and forth between him and I how the plan would work in operation, and he explained as such that they could take as high as a year to pay for a set of tires on a credit card plan at no interest. That was the topic of the discussion.

Q. Did he indicate which brand or brands could be—

A. Yes, it had to be Goodyear tires.

Q. Did that apply also to batteries and accessories in—

A. That is right, and if you—

2073 By Mr. Kelaher:

Q. Do you know how many divisions Shell Company has?

A. I would say ten divisions.

Q. Do you recall the names of the different divisions?

A. Well, there is New York, Buffalo, Detroit, Chicago, Seattle, Los Angeles, Minneapolis, Indianapolis, Atlanta. I think that is ten, isn't it?

Q. Now, when did you leave your employment with Shell Oil Company? Do you remember the approximate date?

A. May 20, 1954.

Q. Did you leave voluntarily?

A. Yes, sir.

Q. Now, thereafter, did you operate a Shell service station?

A. Yes, sir.

Q. And what type of a service station did you operate?

A. I operated a C station.

Q. Where was the station located?

2074 A. Twenty-second and Wabash, Terre Haute, Indiana.

Mr. Kelaher: I'll ask the reporter to identify this document as Commission Exhibit 348A-B.

(The documents referred to were marked Commission Exhibit 348a and 348b for identification.)

By Mr. Kelaher:

Q. Mr. Edwards, I hand you Commission's Exhibit 348A-B for identification, and ask you to state what it is.

A. This is service station manager's agreement and describes the Consigned Products, other merchandise and services, Compensation, and commissions, Operation, Insurance-Indemnity Security, Termination, Entirety-Execution, and an Exhibit A of the equipment at the station such as type of station, the doors, the pumps and the numbers, the tanks and the numbers, your cabinets, your shelving, your tire rack, work bench, air compressors, your lifts, that Shell Oil Company owned.



Q. Is this a copy of your Service Station Manager's Agreement with Shell Oil Company?

A. Yes.

Hearing Examiner Kolb: Are you offering that in evidence?

Mr. Kelaher: I am going to. I now introduce Commission Exhibits 348a and 348b into evidence.

Mr. Ballard: Your Honor, I assume that if received, this evidence and all of Mr. Edward's testimony will be received subject to motion to strike by Atlantic.

Hearing Examiner Kolb: Yes.

Mr. Correa: No objection.

Mr. Kelaher: If agreeable with counsel, we would like to substitute a photostatic copy at a later date.

Mr. Correa: I withdraw that, if Your Honor please, I do object on this same ground that I objected to earlier to any evidence at all concerning this particular type of station because it is outside the allegations in Paragraph 9 of the complaint.

Hearing Examiner Kolb: Objection will be overruled. The document will be received in evidence, Commission Exhibit 348a and b, subject to a motion to strike by Atlantic.

A photostatic copy may be substituted for the original. (The documents heretofore marked COMMISSION EXHIBIT 348a and 348b for identification were received in evidence.)

By Mr. Kelaher:

Q. Now, Mr. Edwards, did you invest capital in this C Station?

A. Yes, sir.

Hearing Examiner Kolb: Approximately how much did you invest?

Mr. Correa: I object to it as immaterial, if Your  
2076 Honor please. \*

Hearing Examiner Kolb: Overruled.

The Witness: \$3,500.

By Mr. Kelaher:

Q. Now, when you entered the station, did you purchase a stock of TBA, answer yes or no.

A. Yes, sir.

Q. And what brand of TBA did you purchase?

A. I purchased Goodyear.

Q. And what was your reason for purchasing Goodyear?

A. Because it was Shell policy.

Q. Which policy was that?

A. The policy that was throughout the Shell organization in my area that every dealer handled Goodyear.

Q. And also batteries and accessories?

A. Batteries and accessories, car and home supplies which I handled.

Q. How long did you remain in the station?

A. I was in the station two years.

Q. And what was your reason for leaving the station?

A. Shell Oil Company put me out of the station.

Q. And how much notice did you have?

A. I didn't have any notice. They just came in on Wednesday and said, well, let's go back a little bit. The salesman came in on a Wednesday, and after other oil  
2077 companies had called on me to get me to take other locations, I read between the lines, that I was done as a Shell operator, and I forced Mr. Murray to tell me on a Wednesday what he was going to do.

Q. Who was Mr. Murray?

A. He was the Shell sales representative that replaced me. So he took me out to a park close to the station, and we sit in the car and talked about it, and he told me I was through as of Saturday. He wanted me to check the

station out the next day, but I couldn't get ready for a check out that fast. So, in other words, they just set me on the street in three days.

By Mr. Kelaher:

Q. Did you have any conversations with Shell Representatives at the time you opened your C station concerning TBA? Just answer yes or no.

A. Yes.

Q. Now—

2078 Mr. Correa: I take it, I have, Your Honor, a continuing objection, so I don't have to take time to object to all of these questions relating to the so-called C stations which are outside the allegations in Paragraph nine of the complaint?

Hearing Examiner Kolb: Counsel may have continuing objection to C station questions.

By Mr. Kelaher:

Q. Would you please state the name of the gentleman with whom you discussed the TBA at the time you opened your station?

A. I discussed TBA with Mr. Jessup.

Q. And state as accurately as possible the conversation which took place.

A. Mr. Jessup was refreshing my memory that I was to handle tires and batteries and accessories for Shell, and I told Mr. Jessup that I knew that, as long as I had been with them, I knew I was supposed to handle Goodyear merchandise, and that I would give him an order. And that is about the way the conversation went.

Q. Did you have conversation with any other representatives of Shell concerning TBA while you were a C station operator?

A. Yes, sir.

Q. Would you please state the name of the Shell representative with whom you had such discussions?

2079 A. Robert Murray.

Q. What was Mr. Murray's position?

A. He was sales representative.

Q. And would you please state the approximate date of the conversations and the conversation or conversations, and as accurately as possible, describe the conversation.

A. In November of 1953, I was having a problem with Goodyear recaps at my station.

Q. Excuse me. You fixed the date of '53. You stated earlier you entered the station in '54, May 21, 1954.

A. I am mixed up. That is correct. It was November '55, I was having trouble with the Goodyear recaps staying on the carcass. So I switched over to U. S. Royal recaps, and Mr. Murray found it out, that I had done this. He give me strict orders that I was to get rid of those U. S. Royals and sell Goodyear retreads at my station.

Q. Now, during your period as a C station operator, did your gallonage increase, decrease, or remain the same?

A. My gallonage almost doubled.

Q. Would you please state the amount of gallonage when you first entered the station, and—

A. When I first entered the station—

Mr. Correa: Object to as immaterial.

Hearing Examiner Kolb: Overruled.

The Witness: The station at the time I took it 2080 over was averaging 21,000, that was for six months period. For the following year, my monthly average was 28,500, and the time following that, I raised it to about 32,000 for about the next, oh, seven months. In fact, one month, I had a peak gallonage of 59,200 gallons.

Q. How did your Shell station compare in gallonage with other stations in the area?

Mr. Correa: Objected to as immaterial to any issue in this matter.

Hearing Examiner Kolb: Objection overruled.

The Witness: My station, I feel, was the largest gallonage station in the area.

By Mr. Kelaher:

Q. Were any reasons given to you by Shell representatives as to why your lease was terminated at your station?

A. No, sir, none whatsoever. They just walked in and said, "You are out of business as of Saturday, and that is the size of it." I asked for a reason, and he said, "I don't have one." The Shell representative said,—

Q. Who was the Shell representative?

A. Robert Murray.

Q. Now, during the period of your station operation, did your TBA volume increase or decrease? Or remain the same?

A. The first year I sold approximately \$3,200 worth of TBA, and the following year it decreased down to about \$2,200.

2081 Q. And what was the reason for the decrease?

A. The reason for the decrease was that, in my marketing territory there, I lost in selling tires due to the fact that I was in competition with the local Goodyear jobber. He would put on these sales quarterly, about every three months, and when I had to buy tires to compete against him, he would give me a dollar per tire off, and I didn't feel that I could compete against him, only making a dollar a tire.

Q. Was this competition, it was at retail, he sold at wholesale and retail?

A. He sold at wholesale and retail.

Q. These sales were at retail?

A. The sales were at sale price, competitive against all others, myself and all other Shell dealers.

Q. Did you incur any advertising expense during your C' station operation?

Mr. Correa: Objected to as immaterial.

Hearing Examiner Kolb: Overruled.

The Witness: Yes.

By Mr. Kelaher:

Q. And approximately how much did you incur?

Mr. Correa: Equally objected to as equally immaterial.

Hearing Examiner Kolb: Overruled.

The Witness: The first year I spent \$2,700 on 2082 advertising between stamps and ten to fifteen, oh, twenty dollar give-away- items, on special promotions, and the second, the last six months that I was in business, I incurred a loss of \$800.00 due to stamps and small give-away items on which I had no help on whatsoever. I stood the whole expense.

Q. You received no reimbursement from Shell whatsoever?

A. No.

Mr. Correa: Objected to as immaterial and patently designed to obtain general prejudice against the company who is being testified about derivatively, I take it, against the respondent.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Kelaher:

Q. In your answer, you referred to stamps. What type of stamps did you handle?

A. Top Value Stamp Company.

Q. Why did you carry Top Value stamps?

A. I carried Top Value Stamps under contract and for reasons that Mr. Murray came to my station a week prior



to the time that I put them in and passed orders to me that from Division headquarters, Mr. Mueller advised that stamps were to be handled by all Shell dealers or lease cancellation would be effected.

2083 Mr. Kelaher: No further questions.

By Mr. Kelaher:

Q. One further. You mentioned Mr. Mueller. Mr. Mueller was what?

A. Mr. Mueller was Division Manager. I couldn't understand why Mr. Murray would say that, but that is what he said.

Mr. Kelaher: No further questions, Your Honor. May we have a short recess?

Mr. Correa: If Your Honor please, I might as well state right now, on the record, I propose, as I think comes as no surprise to my learned friends or to Your Honor, to request that Your Honor permit me to defer my cross examination of this particular witness until after he has testified in the companion case which is going forward according to my understanding at two o'clock this afternoon.

Now, I might state that this witness, as the testimony made clear, has been a Shell employee as well as Shell dealer, and during all of the time with respect to which he has testified. Quite obviously, the respondent, Shell, in the other case to which I alluded, to which we are not parties, ought to be in the best possible situation to cross examine this witness. They should know more about their own employee. I should assume, than we would ever be in a position to know. But Counsel for Shell in that other case had advised me that he feels, in the interest of  
2084 his duty to his client, that he cannot make available to me any information by way of cross-examination material which he may have concerning this witness, and consequently, has not done so, declines to do so, and I must

say, I can't disagree with him, but whether I agree or disagree is quite immaterial because the decision obviously rests with him, and he has decided as I have indicated.

So, in view of that, I am very considerably hampered in effectively cross-examining this witness in this case unless I at least have the benefit of attending a public hearing in another trial, which, I understand, is to take place this afternoon, and which being public, I take it, I am entitled to attend and make such notes as I see fit.

Now, I realize that my learned friend here would like very much to take advantage of this dual trial of the same issue, procedure to whipsaw me in the position where he can cripple my cross-examination, even though this is not a question, a matter in which the old maxim of "sauce for the goose is sauce for the gander" prevails, because I note counsel supporting the complaint in that other case has the benefit of whatever my friends' examination of the witness, is but I submit, if Your Honor please, simple justice requires that this request, under all the circumstances be granted.

Mr. Kelaher: Mr. Examiner, we have had arranged 2085  
ment with counsel for respondents whereby we have furnished the names of witnesses to respondents as promptly as time would permit.

Now, we have done that in good faith, and on October 18, of this year, I called counsel for Atlantic, and I also called counsel for respondent Goodyear, and advised them that Mr. Edwards would be called to testify by counsel supporting the complaint on November 26. Now, under our agreement with counsel, I feel that they have had ample time to prepare for cross-examination, and I strenuously oppose any deferment of cross-examination. We have acted in good faith at all times with respect to the giving of witness's name to respondents' counsel, and in Baltimore, due to circumstances beyond anyone's control, of course,

but they had the names for four months of all the witnesses, who were being called to Baltimore, so no one can say that we haven't kept our part of the bargain insofar as the names are concerned. They have had the name of this witness for over a month, and under our arrangement, I think that we can insist on cross-examination at this point with Your Honor's permission.

Hearing Examiner Kolb: I think counsel's request is objectionable. I think that possibly the best procedure would be to let him cross-examine after the witness has finished in the other case, so we will defer cross-  
2086 examination as requested.

Mr. Correa: Thank you, your Honor.

Mr. Kelaher: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

2090 WILLIAM E. EDWARDS resumed the stand and testified further as follows:

*Cross-Examination by Mr. Correa.*

Q. Mr. Witness, you testified in your direct examination of this case yesterday about a dealer you had at Brazil or Brayzil, Indiana, and you said this particular dealer stocked Kelly tires and he told you that he sold Kelly gasoline, I take it?

Mr. Kelaher: Objection, you Honor, unless the name of the dealer is specified.

Hearing Examiner Kolb: The witness may recall the name.

The Witness: No, I didn't say he sold Kelly gasoline.

Mr. Correa: He sold Kelly—

The Witness: (Interposing) He sold Kelly tires along with Shell gasoline.

2091 Hearing Examiner Kolb: What is the dealer?

The Witness: Mr. Cagle, Brazil, Indiana.

By Mr. Correa:

Q. Was there more than one such dealer in Brazil?

A. Two, Morlan and he was a combination dealer. He had Goodyear and Kelly and Delco batteries.

Q. Did he also sell—

A. Shell gasoline; yes, sir.

Q. But I mean he also sold Kelly—

A. (Interposing.) That is right, sir.

Q. Well, did either or both of these dealers, that is, Mr. Cagle or Mr. Morlan also sell merchandise to Kelly, to the Kelly organization?

A. That is correct.

Q. Was it either or both?

A. Both of them; both.

Mr. Kelaher: Objection, your Honor, as I understood the question, he asked if sales were made to the Kelly organization. I can't understand the relevancy of that question.

Hearing Examiner Kolb: Are you talking about Kelly tires?

The Witness: I think he is talking about the distributor—

Mr. Kelaher: Let's get the question.

Mr. Correa: I'm just trying to get the testimony  
2092 straight as of yesterday.

Hearing Examiner Kolb: You asked if he sold to the Kelly organization?

Mr. Correa: That is right.

Mr. Kelaher: There is no such testimony.

Mr. Correa: Kelly distributor, perhaps, is that right?

The Witness: Kelly distributor bought gasoline, that was in the conversation yesterday, I believe.

Mr. Kelaher: That is right, bought gasoline at the stations and that is why they were selling Kelly tires.

Mr. Correa: That is right and I wanted to be sure there were two such stations, one was Cagle and the other was Morlan.

The Witness: That is correct.

By Mr. Correa:

Q. Now, sir, you were subpoenaed by a subpoena which reads in this case, which is Docket No. 6486, and also in another case, which was carried under Docket 6487, is that correct?

A. That is correct.

Q. And since your appearance here yesterday in this case, 6486, have you had occasion pursuant to that subpoena, to testify in the other case, 6487?

A. Have I had—would you say that again, please?

Q. Have you testified in the other case, 6487?

2093 A. Yes, sir, I have.

Q. Is it the fact, sir, that you testified before a Congressional Committee known as the Roosevelt Committee in Chicago in the spring of this year?

A. Yes, sir, I was up there.

Q. Did you give that testimony under oath?

A. Yes, sir.

Q. Did you in the course of that testimony state that you had been the Shell District Sales Representative in Terre Haute from 1947 to 1954?

Mr. Kelaher: Your Honor, I wonder if the date of that testimony could be given.

Mr. Correa: Counsel may know it. I have identified it as the spring of 1957, which is what I recall about the date. If counsel wants to supplement that, it is all right with me.

Mr. Kelaher: I believe it was on April 30, 1957.

Mr. Correa: I will accept that.

The Witness: I stated that as such. I don't know whether the stenographer got that as I stated up there or not. I was a transport driver for approximately four years and a Shell salesman the rest of the time.

By Mr. Correa:

Q. So that statement was not correct?

A. That is correct.

2094 Q. Did you state in the course of your testimony before the Roosevelt Committee that during that period, referring to the period 1947 to 1954, you had handled eight Shell dealer checkouts?

A. I stated that and it was wrong.

Q. That is not correct?

A. That is not correct, that is right.

Q. Did you in the course of that testimony before the Roosevelt Committee state that one of the dealers you had checked out was Bruno Garzolini at 17th and Poplar, Terre Haute?

A. I stated that, sir, yes.

Q. That is not correct?

A. That is incorrect; yes, sir.

Q. Did you in the course of that testimony before the Roosevelt Committee stated that you had operated a Shell commission station from 1954 to 1956?

A. I did that, sir.

Q. And that was correct?

A. That was correct.

Q. Did you state that during that period the sales gain for gasoline at that station was from 18,000 gallons a month to an average of 40,000 gallons per month?

A. That is correct, sir.

Q. That is correct you so stated?

A. I stated that, sir, yes.



2095 Q. Is that testimony correct?

A. To the best of my knowledge, it is.

Q. Do you recall testifying in this case yesterday morning, sir?

A. Yes, sir.

Q. Do you recall in response to a question by counsel supporting the complaint and over objection, you made the following answer: "The station at the time I took it over was averaging 21,000, that was for a six months' period. The following year my monthly average was 28,500 and the time following that I raised it to about 32,000 for about the next, oh, seven months. In fact I had peak gallonage of 59,200.

Mr. Kelaher: May I have the transcript page?

Mr. Correa: The bottom of 2079. Do you recall giving that testimony, sir?

The Witness: I stated that yesterday morning.

By Mr. Correa:

Q. Was that correct?

A. Yes, sir.

Q. Was your average actually to which you raised it 32,000 or 42,000?

A. Well, that is one testimony and the other testimony, the Chicago testimony, one of them includes three periods, and the other one includes two periods. If you put that down on paper, it would probably come out right both ways.

2096 Q. Well, the testimony in Chicago included the period from 1954 to 1956, did it not?

A. That was the testimony up there which was, let's see, I think I stated it up there, two years, two complete years. The testimony yesterday was a six months' period and a year period and about a nine months' period or eight months.

Q. The testimony or the answer you gave yesterday referred to, "The station at the time I took it over was averaging 21,000, that was for six months period."

A. I said that; yes, sir.

Q. "For the following year, my monthly average was 28,500?"

A. That was probably pretty close to right. I wouldn't know exactly without looking over the Shell books that I kept my records on. That has been quite a while ago. I have to make some kind of an answer but I can't make it exactly correct unless I look at records where I kept my books for Shell. That was in their black book.

Q. Is it your testimony you are not sure which of these figures is exactly right?

A. Well, you couldn't say either one of them was exactly right because I don't have the figures to prove it.

Q. Now I noted that before the Roosevelt Committee, you said "At the peak, I sold 62,000 gallons a month." Did you in fact reach a gallonage of 62,000 gallons a month for more than—

A. (Interposing.) One was sales and one was purchases.

2097 Q. Which was which?

A. The 62,000 at the Roosevelt Committee was sales and the 59,000 in this testimony yesterday was purchases.

Q. Do you recall whether you indicated in the testimony here that you were speaking in terms of purchases?

A. I didn't indicate it.

Q. Did you indicate in the testimony before the Roosevelt Committee that you were speaking in terms of sales?

A. That is right.

Q. Now, in testifying before the Roosevelt Committee, did you not say that when you were operating the Shell station during the period 1954 to 1956, you didn't handle

any other lines, well, that you went along with the Shell policy to the letter and you didn't handle any other lines?

Mr. Kelaher: If your Honor please, I object. If we are going to be citing from the Roosevelt Committee; I would like to have this testimony read and that is not what he said before the Roosevelt Committee.

Mr. Correa: You remember the testimony about that, Mr. Witness, don't you?

Mr. Kelaher: I think in fairness to the witness, if they are going into his Roosevelt Committee testimony, as they are, they should read the exact quote from the Roosevelt Committee because they are characterizing testimony.

Mr. Correa: I don't know why counsel is trying 2098 to hold the proceeding up. We are all trying to get out. If it will make counsel happy, he has a copy of the Roosevelt Committee, why doesn't he put it before the witness?

Mr. Kelaher: Why don't you give him yours?

Mr. Correa: Because I have only one copy to examine from. It is a matter of convenience.

Mr. Kelaher: You are trying to impeach him. If he said it one place—

Mr. Correa: (Interposing.) Your accusation is unprofessional and unwarranted.

Mr. Kelaher: I don't think it is unfair. How can he remember without exactly showing what he said over a year ago. It is ridiculous.

Mr. Correa: It is not over a year ago, the spring of 19—

Mr. Kelaher: (Interposing.) April 30, 1957.

Mr. Correa: Let's get these things straight.

Hearing Examiner Kolb: Objection will be overruled. If counsel is not properly paraphrasing, call my attention to it.

Q. It was not your real reason?

A. It was one of the reasons.

Q. Did you have some other reason?

A. I was very tired of the pressure that was  
2112 exerted upon me to replace dealers and get Goodyear  
tires and batteries out to the stations. That was  
another reason I resigned from Shell.

Q. Any other reason?

A. Not at the moment—I can't think of any.

Q. Now, you were examined on this subject yesterday  
in the course of your cross-examination in this other case,  
were you not?

A. Yes, sir.

Q. You didn't mention this reason you assigned here,  
did you?

Mr. Kelaher: Your Honor, I would like to have a  
transcript of the exact colloquy that took place and what  
the question was.

Mr. Correa: Oh, I think the witness can say whether  
he mentioned it or not.

Hearing Examiner Kolb: Was the question asked of  
him what his reasons were?

Mr. Kelaher: I doubt whether they were, your Honor.  
Let's see it in the transcript.

Mr. Correa: Look at 585.

Mr. Kelaher: 585. All right.

Mr. Correa: Well, the witness was asked, had he de-  
cided he would like to be a dealer instead of a salesman  
and would like to run a station and he said, "That is  
right."

Mr. Kelaher: That certainly doesn't go into his  
2113 reasons.

Hearing Examiner Kolb: He wasn't asked the  
reason why he was changed other than that. That doesn't  
seem to be proper to me, Mr. Correa.

Mr. Correa: I'm not going to argue, if your Honor please.

Hearing Examiner Kolb: That is your privilege.

By Mr. Correa:

Q. Now, were you not asked at the Roosevelt Committee what your reasons were for making the change?

Mr. Kelaher: Let's see the testimony before the Roosevelt Committee and full transcript. I'm not going to have any wild questions.

Hearing Examiner Kolb: The witness can say whether he remembers or doesn't remember if he did.

Mr. Kelaher: Let him answer yes or no.

Hearing Examiner Kolb: If he doesn't remember, then we can go into the record.

The Witness: I don't remember.

By Mr. Correa:

Q. As a matter of fact, did you not volunteer, sir, before the Roosevelt Committee, a statement as to your reason for making the change?

A. I don't remember.

Q. Then I direct your attention to page 57, I think 2114 — A it is. You have an answer beginning on the page there:

"Mr. Edwards: That is right and I will tell you something else."

Mr. Kelaher: What is the question?

Mr. Correa: (Continuing.) "However, is it fair to say you might have had some value or this wouldn't have happened? In other words, you are not one of these ineffective business men that were referred to in the testimony this morning?"

Mr. Kelaher: All right, read the answer in?

Mr. Correa: "That is right, and I will tell you something else. The reason that I quit Shell and took over

the station is because I got saddle sores from the district manager riding me all of the time. We were going on a tour of 15 or 20 stations and I couldn't say one word. He talked continually from the time we left home."

• Was that the reason?

The Witness: That is one of the reasons and it is correct.

By Mr. Correa:

Q. Now, sir, you testified on your direct examination in this case concerning a dealer named Bartl, did you not?

A. Yes, sir.

Q. Did you not also testify before the Roosevelt Committee concerning Mr. Bartl?

2114 A. His name was mentioned, sir.

Q. Did you not in fact state before the Roosevelt Committee under oath that, and I quote—this was the beginning of your testimony, the very first—from the second paragraph:

"Bartl was asked to leave his station for not following Company policy on cleanliness and not making enough progress with his station. It is my opinion that the real reason was personal."

Mr. Kelaher: I wonder if he could finish the testimony?

Mr. Correa: Now, if your Honor please—

Mr. Kelaher: (Interposing.) He is just pulling sentences out of context. I don't think it is proper or fair. Why doesn't he put all his testimony in? He is testifying as to a witness up there named Bartl. Let him put all of it in.

Mr. Correa: If your Honor please, the proper place for this is on redirect. Counsel is absolutely wrong and I venture to say knows he is wrong and if he doesn't, I don't understand how he can be in the position he is in. He is simply trying to aid the witness in obstructing this examination and I object to those tactics.



Mr. Kelaher: I think it is perfectly clear that the witness doesn't need any aid but if he is referring to testimony concerning a specific dealer, we should have his testimony.

Mr. Correa: Do you mean he is beyond aid?

2115 Hearing Examiner Kolb: What is the pending question?

(The reporter read the record as requested.)

Mr. Kelaher: He didn't complete the rest of the paragraph, your Honor.

Hearing Examiner Kolb: I think the witness may answer that question as has been put to him.

Mr. Kelaher: I beg your pardon?

Hearing Examiner Kolb: The witness can answer and make any explanation.

The Witness: I stated that at the Roosevelt Committee and it was true.

By Mr. Correa:

Q. Now, sir, you were examined about Mr. Bartle in the course of your cross-examination in Docket No. 6487 yesterday, were you not, sir?

Mr. Kelaher: I object, your Honor, in going into Docket 6487 continually. He was examined on Mr. Bartle in direct examination on this case. Why shouldn't he be limited to direct examination in this case.

Hearing Examiner Kolb: Objection overruled.

The Witness: Would you read that back please?

(The reporter read the record as requested.)

The Witness: That is correct.

By Mr. Correa:

Q. And did you not on that occasion, page 590,  
2116 testify under oath that you didn't know whether Mr. Bartle requested to leave the station and whether his

Mr. Kelaher: I beg pardon?

Hearing Examiner Kolb: If counsel is not properly paraphrasing that record, call it to my attention.

Mr. Kelaher: I will, think you.

Mr. Correa: I don't know where we stand. Well, 2099 let me put another question. Did you testify, sir, before the Roosevelt Committee in the spring of 1957 under oath and in words or in substance that while you were a "C" service station dealer for the Shell Oil Company, you handled the Goodyear line exclusively?

Mr. Kelaher: Objection, your Honor, he is not paraphrasing his testimony correctly. I have the testimony right here and he has it right there. Let him state what he said. It is at page 54 of the transcript.

Hearing Examiner Kolb: I should think, Mr. Correa, if you are going to question the man about his testimony before the Committee, you ought to read it.

Mr. Correa: I think this is a perfectly fair question.

Hearing Examiner Kolb: You are asking a man whether or not he remembers saying certain things before the Committee.

Mr. Correa: That is right, asking him the substance.

Hearing Examiner Kolb: He will have a right to examine the record.

Mr. Correa: Let him examine it. Will you hand him your copy? Mine is marked up.

Hearing Examiner Kolb: It is going to delay the matter considerably.

Mr. Correa: I don't have the page numbers, all I have is a copy of this thing. Counsel has the original document.

Why doesn't he put it before the witness.

2100 Mr. Kelaher: How can you describe what he testified to before the Roosevelt Committee if you don't have his testimony before you?

Mr. Correa: I do, but I don't have the pagination. If you would listen to what I said, you would understand.

Mr. Kelaher: The page is 54 of Part IV of Distribution Practices in the Petroleum Industries before Subcommittee Number 5.

Mr. Correa: May I have your copy? I will find it.

(Whereupon the document was handed to Mr. Correa.)

Mr. Correa: Fifty-six is what I'm talking about. Do you want the witness to see it?

Mr. Kelaher: You should show him all of it. You are not showing him all if you just show him page 56. In fairness, you should show him the whole thing.

Mr. Correa: I will withdraw the pending question. Mr. Witness, let me ask you this question, sir, if I may have your attention for a moment, did counsel supporting the complaint, in preparation of your testimony in this case, show you your testimony before the Roosevelt Committee?

The Witness: Showed me what?

Mr. Correa: Show you your testimony before the Roosevelt Committee. Did they do that?

The Witness: Did you do it?

Mr. Correa: Did they do it?

2101 Mr. Kelaher: Did I ever show you that book?

The Witness: Not before right now.

Mr. Correa: They didn't do that?

The Witness: No, sir.

Mr. Correa: All right, you may look at it.

Mr. Kelaher: I resent the attack on my integrity and I might further add I had ample opportunity to talk to this gentleman and I refrained from doing so.

The Witness: The first time I had seen this book in Washington.

By Mr. Correa:

Q. Will you find the paragraph where you are talking about, "I didn't handle any other lines."

A. It is on page 56.

Q. Yes.

A. I said that I didn't handle any other lines.

Q. All right, is that true?

A. That is true as far as the station goes. I didn't stock any other line in the station but when a customer wanted a set of Firestone—

Mr. Kelaher: (Interposing.) In addition to that testimony, I still submit that he hasn't shown him page 54.

Mr. Correa: Let him look at 54.

Mr. Kelaher: In fairness to the witness, he should show him page 54.

2102 The second and the third paragraph, I ask you to read that aloud.

The Witness: "The Shell Company forces dealers to handle Goodyear tires and batteries even though in my station, for example, I was not on a commission basis for TBA. Shell threatens lease cancellations if you handle any other line. They receive a ten percent commission from Goodyear on all sales of Goodyear products but the dealer pays local advertising from TBA."

Mr. Kelaher: Thank you.

Mr. Correa: Now that you have read that and made Mr. Kelaher happy—

Mr. Kelaher: I don't want any misparaphrasing of his testimony going into this.

Mr. Correa: Are you finished, counsel? Let me ask you this question; did you indicate to the Roosevelt Committee at any place in this testimony, and I invite you to look at the whole thing if you wish, that when you said, "didn't handle any other lines," you meant "I didn't stock any other lines"?

The Witness: That is what I meant to say, yes, sir.

By Mr. Correa:

Q. I said, did you indicate to the Committee that is what you meant to say?

A. That day there was places—

Q. (Interposing.) Can't you answer that one yes or no?

2103 A. Say it again.

Mr. Correa: Read it please?

(The reporter read the record as requested.)

The Witness: No, I didn't.

By Mr. Correa:

Q. Now, sir, when you testified on your direct examination here about an incident, and I refer to page 2079 of the transcript, which you say took place in November of 1955, you may recall you said that you had switched over to U.S. Royal recaps and that Mr. Murray found it out and he gave you strict orders that you were to get rid of those U.S. Royals and sell Goodyear retreads at your station?

A. That is the very thing he done.

Q. In that connection, did he threaten to cancel you out, sir?

A. Yes, sir.

Q. But you didn't say that in your direct testimony, but he did so threaten you?

A. Yes, sir.

Q. Did you intend to convey to the trier of the facts here an impression that was a fact of Shell Company forcing you to handle the Goodyear line?

A. That was an example of Mr. Murray enforcing Shell's policy.

Q. Now, reverting to the Roosevelt Committee, did you tell the Roosevelt Committee about that alleged incident?

2104 A. I can't remember.

Q. Don't you recall that you didn't, sir?

Mr. Kelaher: If he says he can't remember, that ends it.

The Witness: I don't remember exactly.

By Mr. Correa:

Q. Don't you recall, sir, that you told him the exact opposite?

A. What?

Q. The exact opposite of what you testified to here?

Mr. Kelaher: I object, your Honor. He is misparaphrasing his testimony again. He didn't tell them the direct opposite. I'm not going to sit idly by and have you just making things out of thin air about what this man said before the Roosevelt Committee. If you can specify what he said in the transcript, you can cross-examine him on it; otherwise, I don't think—

Hearing Examiner Kolb: (Interposing.) The witness can state whether he remembers or doesn't remember.

The Witness: I don't remember.

Mr. Correa: Do you have his testimony before him, counsel?

Mr. Kelaher: Beg pardon?

Mr. Correa: May he have his Roosevelt Committee testimony before him?

2105 (Whereupon the document was handed to the witness.)

By Mr. Correa:

Q. I refer you again to page 56 and ask you, did you not tell the Roosevelt Committee, referring to the Shell Company: "They didn't force me there because I didn't handle any other lines." Is that what you told the Roosevelt Committee?

A. Yes, sir.



Q. Is that testimony true, sir?

A. If I can clarify it, I can make it true.

Q. How is it as it stands?

A. What is that?

Q. How is it as it stands? Is it true as it stands in the record before the Committee?

Mr. Kelaher: He has a right to clarify his answer.

Mr. Correa: I really think counsel should be a little less protective. He is doing his best to impede this examination.

Mr. Kelaher: Why doesn't he read his entire testimony. He should have an opportunity to explain in context. He is pulling these things out of context and it is highly unfair, I think.

Hearing Examiner Kolb: The witness may answer.

The Witness: I handled Goodyear tires in my station. The line that you are talking about is the recaps which I handled—U.S. Royal recaps. That clarifies that question.

2106 By Mr. Correa:

Q. It doesn't clarify it for me, sir. Is it true that the Shell Company didn't force you?

A. You are talking about when I took the station over, no, they didn't force me to handle them. I had been a Shell representative and I knew I was going to handle them before I took the station.

Q. Did they force you to handle Goodyear recaps?

A. That is what they forced me to handle.

Q. So when you said to the Roosevelt Committee, "They didn't force me," you meant, except in the case of some—

A. Recaps.

Q. The recaps, but you didn't say that, did you, sir?

A. I don't believe it was worded just exactly like that, no.

Q. You know perfectly well that it wasn't?

A. I haven't even found it yet.

Q. Look at page 56 and see if you don't find it. Maybe Mr. Kelaher will assist you.

Mr. Kelaher: Your Honor, before the Roosevelt Committee, I think we should take into consideration the fact that he wasn't being asked these specific questions that are being asked here with respect to the breakdown of his TBA.

The Witness: That is right.

Mr. Correa: I think counsel might save these attempts to salvage his witness for his brief, really.

2107 Mr. Kelaher: There is no need for that comment.

Mr. Correa: What is the pending question?

(The reporter read the question as follows:

("Question: Look at page 56 and see if you don't find it. Maybe Mr. Kelaher will assist you.")

The Witness: We talked about one paragraph in 56 a moment ago. Is it down farther?

Mr. Correa: See the paragraph, "Mr. Edwards, let's get this straight."

The Witness: We have discussed this paragraph already.

Mr. Correa: That is not the paragraph in which you say, "They didn't force me."

Mr. Kelaher: Let him read the paragraph.

The Witness: I said they didn't force me there because I didn't handle any other lines. But as a representative, when I called on stations, if they had Delco batteries—

Mr. Correa: What is this, if your Honor, please?

Mr. Kelaher: Let him read the whole thing.

Mr. Correa: I'm going to get into the second part as a representative later. I'm interrogating him about his experience as a service station dealer.

Hearing Examiner Kolb: He has read sufficiently.

The Witness: I said this, just like it says in here.

By Mr. Correa:

Q. And you didn't put any qualifications on it?

2108 A. I didn't clarify.

Q. That being an exception in the case of recaps?

A. I didn't clarify it.

Q. Now, sir, you told us yesterday on your direct testimony in this case, as I recall it, you had discussions concerning TBA at the division level of Shell. Is that right? Do you remember that?

A. Yes, sir.

Q. And you referred to Mr. Hynes?

A. Yes, sir.

Q. What is his first name, sir?

A. We always called him Barney.

Q. Now, you said you had discussions with Mr. Hynes specifically concerning the dealer, Mr. Cagle?

A. Yes, sir; that is correct.

Q. And Mr. Hynes told you in substance, 2054, told you in substance that Mr. Cagle, or if you couldn't get Goodyear tires in Mr. Cagle's station that you should start looking for a replacement for Mr. Cagle?

A. That is correct.

Q. Before the Roosevelt Committee, you testified, did you not, and I refer to the same paragraph you were just on, Mr. Witness, that you had before you, that as a representative, when you called on stations, if they had Delco batteries or Armstrong tires or any other allied line  
2109 like that, your orders were to get them out?

A. That is correct.

Q. You remember you were then asked by Mr. Roosevelt who gave you the orders and you answered, "The staff," right?

Mr. Kelaher: Answered what?

Mr. Correa: The staff and Mr. Roosevelt asked you, "Who in the staff?" And you stated, "Al Pavy, for one,

that was the District Manager. That is Shell I am talking about. Of course, at the time, he was supervised by Mr. Barney Heinz." Is that the Barney Hynes you testified about yesterday?

A. Only the spelling is wrong, it should be H-y-n-e-s.

Q. "And Roy Muller, Division Manager in the Indianapolis Division, I mean it works down. They hand out orders just like in the Army, boom, boom, boom." And then Mr. Roosevelt said to you, "However, you can't testify beyond the fact that Mr. Pavy gave you orders."

You answered, "Correct." Is that right?

A. That is correct.

Q. That testimony is true?

A. That testimony is true for that time I was talking about. The testimony that I gave yesterday was about another time, the time I worked for them.

Q. As far as is indicated, both referred to the time you were sales representative for Shell, is that correct?

A. I was explaining further up the page here, the 2110 staff; and how the orders were handed down from top to me and I think that all this information here is correct. I say that it is. That is the way it was handed down. I had to issue the orders to the station.

Q. Is it correct that you can't testify here on the fact that Mr. Paney gave you orders?

A. Mr. Paney did give me orders.

Q. You can't testify beyond that, is that correct?

A. Mr. Hynes told me at division level meetings to get rid of the dealer if I couldn't get him to stock Goodyear tires.

Q. Now, sir, do you recall testifying yesterday under cross-examination in this other case, Docket No. 6487, about your asking Mr. Paney to give you the station, that you ~~ultimately received and were installed as service operator?~~

ultimately received and were installed as service station operator?

Mr. Kelaher: Your Honor, before he answers that, I am going to object if they are going to begin to double team the two cases. Now, I think they should be restricted to the direct testimony in this case. I'm not going to have him rambling all over the universe with what he said in two cases and start cross-examining a witness to that extent. I think if they can show that it ties in with his direct testimony, that is fine, but I think it is highly improper for them to be expanding cross to include direct examination in the Firestne case. I think it is highly improper.

Mr. Correa: If your Honor please, this is on the 2111 issue of credibility, conflicting statements under oath.

Hearing Examiner Kolb: You have a right to refer to the records for conflicting statements, but I don't think you can go in and cross-examine from the other record without first showing that it has been brought out on direct examination.

Mr. Correa: Well, I was simply trying to shorten it up.

Mr. Kelaher: Let's do it the right way. They are always after me to do it the right way.

Mr. Correa: We will do it the long way rather than argue.

Now, sir, is it the fact that you decided at some point in the course of your employment by Shell as a salesman that you would like to be a dealer instead of a salesman and would like to run a particular service station?

The Witness: That is what I asked Mr. Paney for when I resigned.

By Mr. Correa:

Q. That was your real reason for making the change, wasn't it?

A. No, not altogether.

Doctor hadn't suggested that because of Mr. Bartl's stomach condition?

A. He didn't have any counsel with his doctor when he was my dealer. He might have been there one or two times when he had a cold or something, but as far as the condition they were talking about, which was his stomach, he didn't have any time off or anything. He worked every day, just like I do at my station, so I don't think that was any reason.

Mr. Correa: Now, would you read the question back, please? I move to strike the answer as unresponsive, if your Honor please.

Mr. Kelaher: I think it is perfectly responsive.

(The reporter read the record as requested.)

Hearing Examiner Kolb: I think the answer is responsive to the question.

Mr. Correa: I submit it isn't. He hasn't answered whether he testified or didn't testify yesterday.

Hearing Examiner Kolb: If you can testify to what he testified to about Mr. Bartl's stomach yesterday, I will hand it to you. We went over it for about a half hour or three-quarters of an hour.

Mr. Correa: But, that is correct, this is one question and answer which comes out perfectly clear.

Hearing Examiner Kolb: I don't think you can 2117 pick out one spot here and one spot there. We have to go into his testimony as to that.

Mr. Correa: Well, let me ask you the facts. Do you know whether Mr. Bartl requested to get out of his station or whether he was told to get out?

The Witness: He was told to get out.

Mr. Correa: That is your testimony now, is that right?

The Witness: I took a lease—

Mr. Correa: (Interposing.) That is your testimony now?



The Witness: He doesn't understand the oil business, I can see.

Mr. Correa: Listen, if your Honor please, I will ask the the witness be instructed that we don't have to take any impertinences from him. He is here to answer questions.

The Witness: I'm trying to explain.

Mr. Correa: Please confine your answers to questions.

Hearing Examiner Kolb: I think the witness can explain.

The Witness: A lease cancellation—

Mr. Correa: (Interposing.) If you Honor please, I'm not entitled to an answer to my question? Is that your ruling?

Hearing Examiner Kolb: I think he is trying to 2118 give you an answer, isn't he?

Mr. Correa: I think that question can be answered. yes or no.

Hearing Examiner Kolb: Read the question.

(The reporter read the record as follows.)

Mr. Correa: I will withdraw the question.

Mr. Kelaher: He should be permitted to finish that answer. He has been interrupted.

Hearing Examiner Kolb: The question has been withdrawn.

By Mr. Corea:

Q. Now, sir, you testified on your direct examination in this case at pages 2066 to 2069 concerning the Shell policy with respect to TBA to be placed in new Shell stations. Do you remember that?

A. Yes, sir.

Q. Do you remember testifying at 2069 that Shell's policy was established orally?

Mr. Kelaher: Your Honor, I object unless—we talked about many things yesterday and some of the instructions related to specific particular items. Now is this reference

with respect to new stations? I'm not clear? I haven't read it. If that is what counsel says, that is all right.

Mr. Correa: It starts at 2066.

Hearing Examiner Kolb: There is a pending question before the witness. Let him answer.

The Witness: The orders were given to me orally. They weren't read out of a book.

By Mr. Correa:

Q. And you so testified?

A. I testified to that; yes, sir.

Q. You knew, did you not, sir, at the time you gave that testimony, that Shell did in fact have a written policy which they gave to new dealers?

A. I knew that, they sent a letter to all new dealers.

Q. You didn't have occasion to refer to that in the course of your testimony in this case yesterday?

A. That was brought up yesterday.

Q. In the course of your testimony in this case, sir?

A. In this case, no. I don't believe it was.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Correa: I would like to have marked as Goodyear's Exhibit 6, a one-page letter dated June 21, 1954, addressed to Mr. W. E. Edwards, 226 Wabash, Terre Haute, Indiana, Shell Oil Company and signed with an undecipherable signature and the legend underneath, "District Manager."

(The paper referred to was marked Respondent's Exhibit No. 6 for identification.)

2120 Hearing Examiner Kolb: Are you going to place this in evidence?

Mr. Correa: As soon as I have it properly identified. This has been marked in 6487 RX-4.

By Mr. Correa:

Q. I show you Exhibit 6 and ask you, is that (indicating) your signature appearing in the lower left-hand corner?

A. This is my signature.

Q. At the time of that letter, that is, 1954, was it the practice of the Shell Oil Company, to your knowledge, to send a letter of that type to every new dealer?

A. It has been a practice all of the time.

Q. All of the time—

A. (Interposing.) That I was connected with the company, yes.

Q. Was it the practice to obtain on a copy of such letter the acknowledgment of each new dealer?

A. The district manager sent letters to all new dealers.

Q. Was it a practice to ask the new dealer to acknowledge that he had received and read the letter?

A. Yes, he would sign it.

Q. Over his signature?

A. Return it to the district office.

Mr. Correa: Your Honor, I wonder if the witness can identify the signature of the district manager so it 2121 will be in the record?

Hearing Examiner Kolb: Yes.

Mr. Correa: Do you know the signature?

The Witness: That is the district manager's signature.

Mr. Correa: What is his name?

The Witness: A. C. Paney.

Mr. Correa: If your Honor please, I offer this exhibit in evidence.

Mr. Kelaher: May I see a copy of that.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Correa: I withdraw the offer in evidence at this time, if your Honor please. It is marked for identification.

Hearing Examiner Kolb: The record will show Respondent's Exhibit 6-B has been withdrawn.

By Mr. Correa:

Q. During the time that you were in the Shell service station, which I believe was approximately 25 months, was it not?

A. That is correct.

Q. What total dollars amount of TBA did you purchase from Goodyear?

A. It was stated yesterday, I believe, \$5200.

2122 Q. It was stated variously, \$5200, \$5400?

A. One or the other, that was all tires and batteries only.

Q. Now, did you purchase any Goodyear accessories during that time?

A. I had two orders from Chicago Car and Home of accessories from Goodyear.

Q. What did they amount to, sir, dollarwise?

A. Approximately \$400. That wasn't the testimony yesterday.

Mr. Correa: May I take a moment, if your Honor please.

Mr. Keläher: May we have a short recess, your Honor? They said they would like a moment.

Hearing Examiner Kolb: All right, we will take a five-minute recess.

(A short recess was taken.)

2123 Hearing Examiner Kolb: The hearing will come to order.

By Mr. Correa:

Q. Now, sir, you say you bought during the entire 25 months you were a Shell dealer, \$5,200 or \$5,400 of Goodyear tires and batteries?

A. Yes, sir.

Q. And \$400 additional accessories.

A. In car and home, yes, sir.

Q. Now, did you testify Yes, Sir, in 6487, at page 567, as follows:

"Q. Mr. Edwards, I am asking you for the total amount of merchandise you bought from Goodyear or the Goodyear dealer," and I inserted "from" because it is omitted from the transcript.

Mr. Kelaher: You have what?

Mr. Correa: Inserted the word "from".

Mr. Kelaher: Instead of "for", I see.

Mr. Correa: "A. I would say what I said previously, \$5,200 from Goodyear only Goodyear only

"Q. Does that include the accessories?

"A. That includes what accessories I bought from Goodyear out of Chicago.

"Q. No, no matter where you bought them from, did you buy accessories from Mace?

"A. No."

2124 By Mr. Correa:

Q. Now, does that testimony refresh your recollection, sir, that your total purchases including accessories bought out of Chicago was \$5,200?

A. That is correct.

Q. Now, sir, did you buy TBA from Adams Supply, formerly Adams Pontiac?

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: State your reason.

Mr. Kelaher: Reason for the objection is that he is crossing him on direct testimony in the Firestone case, as I understand it.

Hearing Examiner Kolb: He is asking a question, which is proper. Objection is overruled.

Mr. Correa: I will confess, if your Honor please, some of my questions might have curiously happened to coincide with areas investigated into by Mr. Simon in this case, the name of which I don't recall for the moment.

By Mr. Correa:

Q. You bought some U.S. Royal tires there, did you, sir?

A. I think I stated I bought one set, yes, sir.

Q. I am not entitled to this moment to be interested in what you stated, as this is another case.

Now, sir, would you say your purchases from Adams over the 25 months period came to about \$1,500 worth?

2125 A. Yes, sir.

Q. And that included new U.S. Royal tires and re-caps, is that correct?

A. That is correct.

Q. Did you purchase tires from L. S. Bank?

A. Yes, sir.

Q. And those were Firestone tires?

A. Yes, sir.

Q. And did you purchase this from Mr. Bank over the 25 month period average about \$80 a month?

A. Yes, sir.

Q. Did you buy accessories from one John S. Cox?

Mr. Kelaher: Objection, unless there is a definition given of accessories.

Hearing Examiner Kolb: Objection overruled.

The Witness: I bought accessories from John S. Cox.

By Mr. Correa:

Q. And did your purchases from Cox average according to your recollection about \$30 a month?

A. That is approximately, yes, sir.

Q. Now, did you buy accessories from Gibson?

A. Yes, sir.

Q. And you averaged about \$50 a month from him?



A. Yes, sir.

Q. Did you buy accessories from Hoosier Auto Parts?

2126 A. Yes, sir.

Q. And what did your purchases from that company average a month?

A. From Gibson?

Q. From Hoosier Auto Parts?

A. Hoosier Auto Parts, I would say about \$30 a month.

Q. And you said yesterday, \$40 to \$50 a month?

A. Well, if it is in the record, that is what it says, that is right.

Q. Did you buy accessories from Loesser and Son?

A. Yes, sir.

Q. Your average was \$50 to \$100 a month from them?

A. Yes, sir.

Q. From Smith and Decea?

A. Yes, sir.

Q. You averaged \$30 to \$50 a month from them?

A. That is right.

Q. Delco batteries, did you buy Delco batteries from Terre Haute Battery Company?

A. A few, sir.

Q. You bought accessories from that company too?

A. Yes, sir.

Q. And would your average purchases from that company be something over \$60 a month?

A. That is lose, yes, sir.

2127 Q. Now, sir, have you named in your testimony here all the places of business from which you purchased new tires and tubes other than Goodyear tires and tubes?

A. I have named places, other places, yes.

Q. All of them?

A. Yes.

Q. And would the same be true of batteries, other than Goodyear batteries?

A. I bought Delco batteries from Terre Haute Batteries, I believe that is all the batteries I bought, sir, outside of Goodyear.

Q. And would the same be true of accessories?

A. Yes, sir.

Q. Now, sir, I show you this exhibit which consists of a number of pages which for identification purposes I shall simply describe as that which was marked as Respondent's Exhibit 2-A through 2-Z in the case which is Docket Number 6487. I put those before you, sir, and I will ask you, sir, are those reports certified to by you?

A. Yes, sir.

Mr. Kelaher: Your Honor, I am going to object to the introduction of these documents. I don't have the slightest idea where they came from, no authentication; there is no—I haven't been given an opportunity to even look at the documents and I think it is improper cross.

2128 Mr. Correa: May I say for the record that counsel has had all the same opportunity that I have had to look at these documents, that is as a member of the public entitled to examine public record of proceedings before the Federal Trade Commission before its hearing examiners.

Hearing Examiner Kolb: Objection overruled.

Mr. Kelaher: They weren't in—May I ask a couple of questions on voir dire.

Mr. Correa: I think, perhaps, it would be more orderly if I would finish laying my foundation. I have no objection to counsel asking a few questions on voir dire.

Hearing Examiner Kolb: You may proceed.

Mr. Correa: Thank you.

By Mr. Correa:

Q. Is it a fact, sir, that these documents show your gross sales of TBA, among other things, of course?

A. It does, among other things, but they are separated.

Q. According to tires, batteries, and accessories, is that correct?

A. No, sir. Tires and tubes is separated; batteries is separated; but you would combine it to get tire and battery volume.

Q. And there is an item of accessories?

A. There is an item of accessories, more than accessories; it says accessories, car and home.

2129 Q. Supplies?

A. That even goes into refrigerators.

Q. And that shows gross sales of those?

A. That is gross sales, yes, sir.

Q. And it also shows the cost of sales in respect to each of those categories, does it not, sir?

A. Yes, sir.

Q. And by the way, sir, did you sell any refrigerators during the 25 months you were at the station?

A. No, I didn't happen to sell any, but I could have sold them. I sold fans and air conditioning units.

Q. Now, the amount shown as cost of sales, under these various categories, the actual cost to you of goods sold, that correct, sir?

A. Yes, sir.

Q. And where labor was involved, such as servicing your installation in connection with the sale of accessories, as I understand it, labor is shown separately?

A. Separately.

Q. On these sheets. And these sheets cover the entire period of your incumbency as a service station operator during these 25 months?

A. With Shell, yes, sir.

Q. Each one is certified to by you in writing?

A. Each one, by the month.

2130 Mr. Correa: I asked that they be marked for identification at this time, if your Honor please, in this case.

Mr. Kelaher: Your Honor, reference was made to—may I ask a question just to clarify the document.

Hearing Examiner Kolb: Yes.

*Voir Dire by Mr. Kelaher.*

Q. You stated that labor appeared under a separate heading, but I don't see any particular heading identified as labor. Where does that appear on the exhibit?

A. On the bottom, service and labor income.

Q. Where is that?

Mr. Correa: The witness pointed it out.

By Mr. Kelaher:

Q. Service and labor income, in the first section would indicate—

A. That is strictly labor.

Q. I see.

A. Like wash jobs, grease jobs, labor on tune up, and labor on brakes, labor on new joints, labor on all mechanical things that went into the car or on the car.

Hearing Examiner Kolb: That will be marked Respondent's Exhibit 7-A to 7-Z.

(Whereupon, the documents referred to were marked Respondent's Exhibit 7-A to 7-Z for identification.)

2131 Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Correa: I shall wish to offer them in evidence in this case.

Hearing Examiner Kolb: Do you want to offer them today?

Mr. Correa: Yes.

Hearing Examiner Kolb: Then, I can receive them in evidence. Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Ballard: Your Honor, in spite of the fact that it is offered by co-respondent and not by counsel supporting the complaint, I assume it will still be taken subject to motion to strike by Atlantic in view of the fact that it relates to Shell.

Mr. Kelaher: Your Honor, these documents, as I understand it, are not the originals. We have no way of knowing whether they are from the files of Shell or where they are from. We have no authentication of the documents, and I think that an improper foundation has been laid for their admission.

Hearing Examiner Kolb: Are the documents 2132 signed by the witness and so testified to?

Mr. Correa: The witness has so testified.

Mr. Kelaher: This is a photostatic copy.

Hearing Examiner Kolb: He testified these are reports he signed and his signature is on them.

Mr. Kelaher: I notice on Respondent's Exhibit 28, for example, lines crossed out and figures on top of them. I don't know what they have done to these documents. I am not implying they have done anything, but I think figures crossed out and other figures put in, I don't know whether the witness did that or not.

Hearing Examiner Kolb: A good way to find out is to ask him.

Mr. Kelaher: I think they are objectionable. I think the originals—

Hearing Examiner Kolb: He has testified those are the reports which he sent in, and the corrections appear to be on the photostats, so it must have been on the original.

Mr. Kelaher: All he testified to was that is his name, that is his signature.

Mr. Correa: He testified they were authenticated by him over the signature each month.

Hearing Examiner Kolb: They show all the purchases he made during that period.

Mr. Kelaher: I would like to ask him some questions on voir dire.

2133 *Voire Dire Examination by Mr. Kelaher.*

Q. Actually, in Exhibit 2-A, you have stated that this is your signature, is that correct?

A. I stated it was my signature.

Q. Is it your testimony that all the figures appearing on this appeared thereon when you signed this statement?

A. Yes and no. I would have to clarify it. Mr. Murray, whose signature appears here, was my representative, and he made these out for me. I didn't make these documents out. There are times when he would leave the station and go to his home and make these out. This is the condition that they would come back to me in. There would be figures down, pencil lines through them, and corrected. Then I would—he would bring them to me and I would question him and he would say, "They are all right, I have been over them, why don't you sign them and let's get them off in the mail?"

Q. Then would these corrections appear on the statement before you signed them?

A. Yes.

Q. Do you know whether these are all the corrections that appeared on the statement before you signed them? Do you know whether any corrections were made after you signed them by Mr. Murray?

A. I would say that it might have happened once.

2134 Q. Do you recall any instances when it did happen?



A. I recall—you see my wife did my bookkeeping, and she would go over them, and if they was wrong then I would call Mr. Murray in and he would check it with me. Then he would make a cross out if he was wrong. Then there is cases where he would argue about it and say that he was right, that he was going to send it in that way.

Q. Even though you didn't subscribe to it?

A. Even though I didn't subscribe to it.

Mr. Kelaher: Your Honor, in the light of that testimony, we should have further authentication of the documents. He testified that his signature appears thereon, but he has also testified that some of the figures appearing thereon were entered thereon without his consent.

The Witness: There is more than one with cross-outs.

Mr. Correa: Perhaps a question or two additional would clarify the matter.

*Cross-Examination by Mr. Correa (Resumed).*

Q. Mr. Witness, these records, Exhibit 7-A through Z, are they records which were kept by you in the regular course of your business as a service station operator?

A. No, sir. These were the sales representatives' records of my station. When I posted, I had another sheet that I made out every day of my business, which I 2135 saved till the end of the month. And then he took those separate sheets and reposted them on to this sheet, totaling them up.

Q. Were these records kept regularly?

A. They was made out the last—the day prior to the end of the month, every month.

Q. Every month?

A. This paper here (indicating).

Q. Were they records required by the Shell Company?

A. Yes. That is how they based my taxes and figured my profit at the station.

Q. And they were required for the two purposes you have mentioned?

A. Yes.

Q. When you mentioned taxes in this connection you refer to federal income taxes?

A. Yes, sir.

Mr. Kelaher: I submit that a proper foundation hasn't been laid. These were prepared by Mr. Murray. Mr. Murray isn't here. And they were sometimes signed and figures placed thereon without the consent of the witness, even though he was asked to sign.

Hearing Examiner Kolb: The documents appear to bear the supervisor's statement, "The above report was prepared from the station manager's records which were available at the station," and also bear the certification by 2136 Mr. Edwards, "I certify the above to be a true report of my business activities, my current condition," and so forth.

It appears to me that we have here a document which has been prepared and certified to by Mr. Edwards as being a reflection of his books and records and the activities of his business during the months. Under those circumstances, they will be received in evidence and will be so received as Respondent's Exhibit 7-A to Z.

(Whereupon, the documents referred to, heretofore marked RESPONDENT'S EXHIBIT 7-A to Z for identification, were received in evidence.)

Mr. Ballard: Would your Honor add—

Hearing Examiner Kolb: Subject to a motion to strike by Atlantic.

By Mr. Correa:

Q. You have testified on direct that the policy of the Shell Company with respect to TBA, and with respect to your relations with dealers when you were a sales rep-

representative of the company, was given to you orally; is that right?

A. That is correct.

Q. Would that be true of all of the policies on those subjects?

A. Would that be true of all of the policies? I got my orders orally from Mr. Pavey when I was in the territory, or at meetings, sales meetings. No instructions by 2137 the book until after about one year I had been a sales representative.

Q. So is your answer to that that it was not true as to all of the policies of the Shell Company which was given to you with respect to—

A. I think I said Yes, didn't I? I don't remember exactly. Yes, sir.

Q. What is the fact? Forgetting your prior testimony.

A. The first year as a sales representative was Yes. But after that, No, because then I got my other book to go by, the only book to go by, on "L" stations.

Q. So you were given written policy instructions?

A. After a time.

Q. Do you recall being asked yesterday in the course of your cross-examination in Docket No. 6487, at Page 568, the following questions, and making the following answers:

"Question: Now you testified earlier that all policy of the Shell Oil Company with respect to TBA with respect to your relations with dealers was given to you orally, is that right?

"Answer: That is right.

"Question: Were you ever given any written policy instructions?

"Answer: No. I don't believe so."

Do you recall being put those questions and making those answers?

2138 A. Yes, sir, I recall that.

Q. Are they correct or not?

A. They are correct, but I was a little confused with Mr. Simon yesterday. The policies I was talking about, where I said Yes, I thought that he was asking me of the typewritten papers and not the dealer station books. I got his question there wrong, do you know what I mean? So I answered him on the letters that came out of the division office, and not on the books that came with the briefcase that I got after about a year.

Q. Is it that these answers are incorrect?

A. No, they are—

Q. For the reasons you have mentioned?

Mr. Kelaher: Objection, your Honor. That wasn't his answer.

The Witness: No, they are not incorrect. They are correct as far as I just explained it.

By Mr. Correa:

Q. They are correct subject to the qualification you have just given?

A. Yes, sir.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

By Mr. Correa:

Q. Now, sir, I show you this booklet which has 2139 been marked Respondent's Exhibit 3 for identification in some other case, and I ask you, sir, during the period that you were a representative of the Shell Oil Company, why you were given any book similar to that?

Mr. Kelaher: May I examine it first?

The Witness: I was not given a book at the time of promotion to sales representative. It was about a year after that I obtained a book.

Mr. Kelaher: I note that the document identified as

Respondent's Exhibit 3 for identification in Docket 6487 has a date "revised edition, August 1955."

I would like to ask if there have been any changes, if this is the actual document which was handed to Mr. Edwards, or whether or not there were changes thereon. I don't think he was an employee of the company in August 1955, was he?

The Witness: That is correct.

Mr. Correa: Frankly, I don't know. Counsel knows as much about this document as I do. I offer to prove that the witness will concede that the document handed him contains certain statements.

Mr. Kelaher: How can he testify to it when he wasn't with the company, when the document was issued in August 1955?

Mr. Correa: I don't think counsel really understood the testimony.

2140 The testimony was not that the document was handed to him. The testimony was that a similar document was handed to him.

Mr. Kelaher: Let's see the document.

By Mr. Correa:

Q. Will you produce it, Mr. Witness?

A. I don't have it. I had to turn everything in when I resigned.

Mr. Correa: I am sure I don't have it. I don't represent the Shell Oil Company.

Mr. Kelaher: The burden is on counsel. He is conducting the cross-examination. If he wants to question him about a document—

Mr. Correa: Your Honor, there is no pending offer of anything. I don't know what counsel is fulminating about. I think I had best get on with my examination. I was trying to shorten it, but that is an idle pursuit. Coun-

sel is in his home city, I am not. He couldn't care less, I suppose.

Mr. Kelaheer: I am going to object to any extracts from that document.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Correa:

Q. The booklet which you received, which you 2141 have just mentioned, did contain certain policies, did it not?

A. Yes, sir.

Mr. Kelaheer: Which booklet are we talking about now?

Mr. Correa: The one he just mentioned.

Mr. Kelaheer: I think we should have some identification of it.

Mr. Correa: Is this a motion or objection?

Mr. Kelaheer: I would just like to have some identification of the document he is alluding to.

Hearing Examiner Kolb: He is referring to the document which the witness said he received about a year after he became a sales representative, which he turned back to the company after he discontinued his service.

Mr. Kelaheer: I object to any questions on that. I think the booklet is the best evidence. I think the best evidence rule clearly applies.

Hearing Examiner Kolb: We haven't reached that point yet.

Mr. Correa: All right. We will.

By Mr. Correa:

Q. Did the booklet that you received contain this statement, and I quote:

"Type L dealers are independent service station



operators in every sense of the word and are not  
2142 obligated to adopt Shell's plans and programs any  
more than would any dealer. Of course, Shell rep-  
resentatives can and should describe plans and make  
suggestions from time to time to any dealer which are  
intended to make the operations of the station more  
profitable, and since a profitable operation depends to  
a great extent upon the application of certain sound  
and fundamental operating practices, a considerable  
portion of this booklet has been devoted to a review of  
these practices."

Did it contain that statement?

Mr. Kelaher: Objection, your Honor. The best evi-  
dence is, ~~the~~ document itself. They have a copy of the  
document. Let them present it to the witness. He is  
asking him to remember what was said in a document which  
he received, I don't know, four or five years ago.

Hearing Examiner Kolb: He hasn't said whether he  
remembers or not.

The Witness: I can't rightly remember as to all of  
those phrases, how they is worded, so I had better not  
answer that.

By Mr. Correa:

Q. Isn't it the fact, sir, that you testified in Docket No.  
6487 yesterday afternoon—and I refer to Page 571 of  
the testimony—and weren't you asked the precise  
2143 question which I have just put you?

A. Yes, I was asked that question.

Q. And didn't you answer, and I quote your answer,  
"It did." Wasn't that your answer yesterday?

A. Yes. Can I clarify that?

Mr. Kelaher: Go right ahead and clarify.

Mr. Correa: I object, if your Honor please.

Hearing Examiner Kolb: I think the witness can clarify this if he wishes to.

Mr. Correa: I submit with great respect that I do object and I object on the ground that—

Hearing Examiner Kolb: Your objection will be overruled.

Mr. Correa: All right.

The Witness: I was answering that question but I didn't know that that wasn't the book that I didn't have. I didn't know that yesterday, that that was the book. I didn't know that it had been revised since I left the organization. So I think they got me there a little—

By Mr. Correa:

Q. So that your testimony yesterday when you gave the answer "It did" was not correct or accurate?

A. That's right, according to that document.

Mr. Kelaher: I might point out for the purpose of the record that the date was never given to the witness.

2144 The Witness: It wasn't.

Mr. Correa: Neither was the booklet. He was asked the identical question asked here, was he given a similar book.

Mr. Kelaher: If we are going into his testimony in Docket 6487, let's put it in its proper context.

Mr. Correa: I offered to stipulate, but you were the one who was sticking about that.

Mr. Kelaher: For a very good reason.

By Mr. Correa:

Q. Did the book which you received about a year or a year and a half after you were made sales representative, contain this statement, and I quote:

"It should be emphasized that full discussion of the essentials of service station operation should be had with the prospective lessee prior to execution of said

lease. While it is recognized that no understanding can be made with the lessee as to the manner or method of operating the station, a full exchange of views as to proper operation should provide a fair guide to the proposed lessee's future success.

"After the leases have been signed, Shell's control has been relinquished and the future of the station depends upon the lessee voluntarily carrying out the merchandising policies recommended by Shell, not be-  
2145 cause he is obligated to so operate his station but because he remains persuaded that such policies are for his own best interests."

A. I would say that a similar—

Mr. Kelaher: Let him finish.

Is that a question?

By Mr. Correa:

Q. The question is, did it contain that statement?

A. I would say that that is similar to the one that I had in my book.

Q. You attempted to perform according to that statement, did you not?

A. Yes, and I pursued the dealer to do certain things beyond that book, which was given to me orally.

Mr. Correa: Read the question and answer.

(The reporter read the question and answer.)

2146 By Mr. Correa:

Q. Isn't it true that yesterday in 6487 that self-same statement was put to you, with the question "Did the book you had contain that statement?" And is it not further true—and I refer to page 572 of the record—that in answer to that question you volunteered the answer "I attempted to perform that," without any qualification as to what you did other, different or further than that? Isn't that true?

A. That is true, talking about that book there, but not the other book.

Q. Isn't it further true that when you were further pressed with the question "Did the manual contain that statement," you answered, and I quote, "It must have contained it or I wouldn't have performed the duty." Isn't that true?

Mr. Kelaher: Objection, your Honor. It is very clear at this point that the witness was under a misconception yesterday because they were questioning him about a book which was revised in August 1955, which was after this man had left Shell employment, and he was under the misapprehension that they were referring to a booklet given to him. I think he has clarified that. I think the booklet itself is the best evidence. If they want to bring it in, let them do it.

Mr. Correa: If your Honor please, that speech, outside of holding us up, adds absolutely nothing. It is not an objection to the pending question, as I understand it.

2147 Mr. Kelaher: It is an objection to this line of questions.

Mr. Correa: The question is didn't he testify in a certain way yesterday? He has made his explanation. I want to get into this record the fact. I may say this is another function of the difficulty of this bizarre method of trial of these cases which has been forced upon all of us, I take it, including your Honor, that arises out of the very fact as to which I directed attention at the opening of this hearing yesterday.

I submit I have no other choice but to go on in this manner.

Hearing Examiner Kolb: The objection will be overruled.

(Question read.)

A. I will say it must have it in there.

By Mr. Correa:

Q. Did the booklet which you were given contain this statement, and I quote: "Dealer operation of service station either 'L' type or any other is a private and independent business enterprise in every sense of the word. The proprietor is entirely on his own. He employs his own help, directs and manages the business, and at all times must depend upon his own ability and initiative for the profitable conduct of the business."

2148 Mr. Kelaher: I understand that counsel is still reading from the revised edition, August 1955. That is understood on all the high-sounding speeches we are getting here. Right?

Mr. Correa: There you are in error, counsel. Counsel is reading from the notes prepared by the service represented by the reporter.

Mr. Kelaher: I think your Honor at this point, if we are going to go back in docket 6487 testimony, it should be clearly understood that the August 1955 edition was the one from which Mr. Simon quoted in docket 6487.

Hearing Examiner Kolb: I think the record shows that.

Mr. Correa: I don't believe the record shows anything of the sort, sir.

Mr. Kelaher: It should if it doesn't.

Mr. Correa: I don't know that it is the fact. The record certainly does not show it.

Hearing Examiner Kolb: Certainly Mr. Simon questioned the witness from the revised edition of the document which you have marked there as an exhibit and which is marked revised edition.

Mr. Correa: Your Honor has a better vantage point of what Mr. Simon said than I, sitting there—

Hearing Examiner Kolb: No, you have it before  
2149 you, the blue book. Isn't that the document from which he questioned him?

Mr. Kelaher: The answer is Yes.

Mr. Correa: He showed the witness this exhibit—

Hearing Examiner Kolb: And he read from that exhibit to the witness.

The Witness: That is right.

Mr. Correa: He elicited the testimony that the witness had got a similar book. Then he read to the witness, or quoted to him, various statements and said did the witness' book contain these statements, to which the witness by and large said Yes, they did.

It does not appear in the record, and I understand I am bound by the record, that Mr. Simon was taking those statements out of this book.

Mr. Kelaher: That is right, he was.

Mr. Correa: You agree with me it doesn't appear in the record?

Mr. Kelaher: I am saying it should appear in this record that he was taking them out of that book in that record. That is my point. I don't care what is there.

Hearing Examiner Kolb: I think Mr. Kelaher is right to the extent to where your questions about the answers given to Mr. Simon in connection with the questions. If you want to ask him does the statement appear in 2150 the book he had, that is all right.

Mr. Correa: This is the form of my question.

Hearing Examiner Kolb: You are asking did he say something else.

Mr. Correa: Read the pending question. I submit with great respect the pending question is clear.

(Question read.)

Mr. Kelaher: The point I am making, I think it is perfectly clear and well taken, is that the quotations being given to the witness are from the revised August 1955 edition identified as Respondent's Exhibit 3-A, I believe, in Docket 6487.



Hearing Examiner Kolb: The question is purely as to whether or not that statement appeared in the book he had.

Mr. Correa: That is right.

Hearing Examiner Kolb: That is all.

The Witness: And I will say I think it did.

By Mr. Correa:

Q. Did the booklet which you received after you had been a Shell sales representative for a year or so, contain this statement, and I quote: "As heretofore explained, when Shell leases a station to a dealer, such dealer is in all respects an independent businessman and not a Shell employee, and Shell does not have any right nor does it undertake to control or direct his business activities. Conversely, such dealers have no right to represent themselves as Shell agents or employees or to conduct their business in the name of the Shell Oil Company." Did it contain that statement?

Mr. Kelaher: If he knows.

Mr. Correa: I assume the witness understands he is not to testify to anything he doesn't know.

A. I think it did.

By Mr. Correa:

Q. I ask you, sir, did it contain this statement, and I quote: "All existing and future Shell dealers are to be sent a letter stating the company's TBA policy. Each division will see that these letters are sent in accordance with current marketing practices." Did it contain that statement?

A. Yes, sir. You have that letter.

Q. And the letter referred to is the one that has been marked for identification herein as—

Hearing Examiner Kolb: That would be Commission's

Exhibit 349 now. Is that the one you want to introduce, Mr. Kelaher?

Mr. Kelaher: Yes, that is correct.

Hearing Examiner Kolb: Have the reporter mark that. (The document referred to was marked Commission Exhibit 349 for identification.)

2152 By Mr. Correa:

Q. Now, sir, I think you testified that as sales representative you were responsible at one stage for some 17 dealers, is that right?

A. At one what?

Q. At one stage; one point.

A. I was responsible for how many dealers?

Q. Seventeen.

A. May I look at my station numbers on my paper that I had yesterday?

Q. Was it approximately that?

Mr. Kelaher: I wonder if his recollection could be refreshed by his testimony.

A. Fifteen.

By Mr. Correa:

Q. I have no objection to looking at a little paper or a little book.

Mr. Kelaher: He has no little book, I might add. He has a little paper.

Mr. Correa: He had a little book when he testified in our point. I made no point and I make none now, so why don't you do the same?

Mr. Kelaher: For your edification, it should be noted that that book was blank.

Mr. Correa: I am glad you know so much about it.  
2153 I don't know.

By Mr. Correa:

Q. Is it not true that one method of measuring TBA sales which was used in your Shell district while you were a sales representative on at least one occasion is to measure it in terms of how much TBA a dealer is selling per thousand gallons of gasoline?

A. It happened once; yes, sir.

Q. Now, sir, one of the dealers you spoke about on your direct examination in this case I believe was named Laybold?

A. Yes, sir.

Q. L-a-y-b-o-l-d, is that the right spelling?

A. Yes.

Q. You didn't pressure Mr. Laybold, did you?

A. I didn't have to pressure Laybold. He went along, when I told him I wanted him to handle Goodyear tires; he went along.

Q. In point of fact you did not pressure him?

A. No, sir, not that particular dealer, no.

Q. And he was 100 percent a Goodyear dealer, was he not?

A. That is right.

Q. And his TBA sales were approximately—let's see, his TBA purchases I guess were \$29 per thousand gallons of gas?

A. Yes, sir.

Mr. Kelaher: Objection, your Honor. I am going 2154 to object. Apparently we are going into some other testimony brought up by Mr. Simon. This witness has stated that they used a per thousand gallon method at one time. I would like to have that time identified, and I am going to object to any questions other than the period during which they used that ratio or that measuring yardstick. I don't think he had knowledge—

Mr. Correa: There is no pending question, if your Honor please.

Mr. Kelaher: Then I move that the answer be stricken.

Mr. Correa: I submit it is proper cross-examination.

Hearing Examiner Kolb: I will overrule the objection.

The motion to strike will be denied.

By Mr. Correa:

Q. Is there a dealer in Terre Haute, Mr. Witness, named Kranche?

A. The name is Krauche.

Q. How would you spell it?

A. K-r-a-u-c-h-e.

Q. Did he purchase TBA on the basis of about \$2 per thousand gallons?

A. Yes, sir.

Q. From Goodyear?

A. From Goodyear.

2155 Mr. Keller: I wonder if we could have some identification of the time period we are talking about.

Does docket 6487 indicate the time period?

By Mr. Correa:

Q. Would you indicate what time period you are referring to in your answer, sir?

A. I am referring to the fall meeting of December 1953.

Q. Is there a dealer named Witsell?

A. W-h-e-t-s-e-l-l.

Q. Whetsell?

A. Yes.

Q. And you sold him about \$6.00 per thousand?

A. Yes, sir.

Q. And a dealer Scott?

A. Yes, sir.

Mr. Kelaher: I object, your Honor, unless we fix a time.

Hearing Examiner Kolb: I take it the witness is testifying as to the ratio shown by the audit taken December 1953.

The Witness: December 1953.

Mr. Kelaher: That is the first that has appeared in the record. Do all these ratios—

Hearing Examiner Kolb: He just stated that a minute ago.

2156 Mr. Kelaher: Does that apply to all these ratios?

The Witness: That is correct. It applies to one reading over all the stations.

By Mr. Correa:

Q. Dealer Scott. you sold about \$11 a thousand?

A. That is correct.

Q. And dealer Cole—C-o-l-e?

A. Yes.

Q. About \$5 a thousand?

A. Yes, sir.

Q. And dealer Rader—R-a-d-e-r—about \$12 a thousand?

A. Yes, sir.

Q. Conrad, about \$7 a thousand?

A. Yes, sir.

Q. As a matter of fact, Rader and Conrad both stocked U. S. Royal tires, didn't they?

A. That is correct.

Q. Which they bought from Adams?

A. Yes, sir.

Q. And a dealer named Bartholome?

A. Bartholome—B-a-r-t-h-o-l-o-m-e.

Q. He purchased about \$7 a thousand?

A. That is correct.

Q. And a dealer named Miller, about \$5 a thousand?

A. Yes, sir.

2157 Q. Mickles—M-i-c-k-l-e-s?

A. M-i-k-e-l-s.

Q. About \$8 a thousand?

A. Yes, sir.

Q. And he stocked, Mikels, I mean, Delco batteries?

A. Yes, sir; he did.

Q. Which he bought from Gibson?

A. Yes, sir.

Q. And a dealer Drake, about \$2.50 a thousand?

A. That is correct.

Q. Dealer Morris, to whom you sold about \$17 a thousand?

A. Correct.

Q. And Morris stocked Delco and Willard batteries, is that correct?

A. Yes, sir.

Q. There is a dealer named C-h-e-l-e?

A. C-h-e-l-e?

Q. Do you recall, would it be Cagle?

A. C-a-g-l-e, yes.

Q. Cagle stocked Kelly tires?

A. That would be Cagle. We talked about him, previous.

Q. He bought TBA at the rate of \$4 a thousand.

A. About \$4.

Q. You talked in your direct testimony in this case about a dealer named Fortin?

2158 A. Yes, sir.

Q. And he bought about 50 cents a thousand?

A. About that, yes. That is correct.

Q. TBA. He is an Armstrong dealer?

A. That is correct.

Q. He stocked Armstrong, Royal, and Cooper tires?

A. That is right.

Q. Also stocked Delco batteries?



A. Right.

Q. Did you mention in your direct here a dealer named Garzolini, and would you spell that?

○ A. G-a-r-z-o-l-i-n-i. I mentioned him; yes, sir.

Q. He was buying about \$26 a thousand?

A. Yes, sir.

Q. Now, sir, you have testified I believe in your direct examination here about leaving your station in May—am I right, it was May of 1954?

A. I went in business in May of 1954, when I left Shell.

Q. That is when you started the station?

A. Yes.

Q. When you left it was—

A. I left 6/16/56.

Q. That would be June of 1956?

A. June 16, 1956.

Q. Before you left your station, sir, you were  
2159 solicited by two other oil companies?

A. Right, sir.

Q. As a service station manager for them?

A. Service station dealer.

Q. And that was Ohio?

A. Ohio and Texas.

Q. And is it also true, sir, that you left your station on a Saturday night and opened a new—opened in a new station on Monday morning?

A. Yes, sir; that is correct.

Q. The new station was Phillips?

A. Yes, sir.

Q. Phillips Petroleum station.

2160 Q. Is it true that when you were sales representative of the Shell Oil Company, you had instructions from the company to continually try to get the number two man in other service stations, and try to make him a Shell dealer?

A. That was policy, to get a dealer, a second dealer, a fellow who worked for a dealer, close to the place of business where you was going to replace or where you was going to let a man go or he was going to quit. That was policy of the company to move a man like that close so he could bring some business with him over to Shell from a competitive company.

Q. When you terminated your Shell service station tenure in June, 1956, did you turn over the tires you had on hand to the incoming dealer?

A. He bought them.

Q. He bought them. And did they include some re-treads?

A. They included; I think, four re-treads.

Q. Were those Goodyear re-treads?

A. No, sir. Those was Royal Winter Tires.

Q. You have testified, sir, that you were a salesman, a sales representative of the Shell Oil Company for approximately two and a half years, is that right?

A. Yes, sir.

Q. And during that period of time, did you ever install and erect promotional material in Shell stations?

A. Yes, sir.

2161 Q. That was one of the routine jobs of a salesman?

A. Yes, sir, to see that it went up.

Q. And during that two and a half year period, did you go into stations and work with dealers in connection with promotions on major holidays, especially the Fourth of July and Labor Day?

A. Yes, sir.

Q. The promotional work you did with dealers was designed to help them sell more TBA, was it not?

A. That is correct.

Q. And it did help them?

A. I would say so.

Q. Did you also in connection with your work as a sales representative on occasion put on a uniform and actually help the dealer pump gasoline?

A. Yes, sir.

Q. Now, in the case of this one dealer, Bartl, that you testified to on direct, didn't you actually go down to his station and physically show him by doing it how he should clean up his station?

A. Yes, sir, about a day every two weeks.

Mr. Kelaher: Your Honor, I object to this line of testimony, the last two questions and answers, unless the purpose is stated. Unless I know the purpose, I move to strike.

What is the purpose of the question?

2162 Mr. Correa: The purpose of the cross-examination, the witness has given direct testimony under the questioning of counsel which is carefully one-sided and deals with one alleged aspect of his activities as a salesman, and gives a distorted and perverted picture of those activities. I am seeking now to show what the true picture is by checking into these lacunae that have been carefully left in the direct testimony, the true facts which, of course, are unwelcome to counsel because they were with the inference that counsel seeks to draw.

Mr. Kelaher: Your Honor, I don't think counsel's brilliant oratory will change the facts one iota. I don't see the relevancy to my pending objection.

Hearing Examiner Kolb: Objection overruled.

By Mr. Correa:

Q. Now, sir, that kind of assistance to dealers was routine with Shell salesmen, was it not?

A. That's right.

Q. And at times was it required that you take at least one day a week to do that sort of work?

A. Yes, sir. At various spots.

Q. Did you also, as a normal part of your activities as a Shell salesman, from time to time assist the particular dealers to sell accounts?

Mr. Kelaheer: Objection, your Honor, unless it is 2163 related to TBA.

Mr. Correa: I submit—

Hearing Examiner Kolb: Objection overruled.

Mr. Kelaheer: You may answer.

The Witness: I went once with a dealer to solicit some gasoline business and motor oil.

By Mr. Correa:

Q. That was from a lumber company, was it?

A. Yes, sir.

Q. That was the normal procedure for a Shell salesman, wasn't it?

A. I done it. I wouldn't say it was normal because there are very few of them done it.

Q. But didn't you testify yesterday, in the case which we have been describing as Docket 6487, at page 613, about this incident?

A. Yes, I—

Mr. Kelaheer: Objection, your Honor.

Mr. Correa: That is preliminary.

Mr. Kelaheer: That is an objection. I think you should have the courtesy of letting the Examiner rule.

Hearing Examiner Kolb: Overruled.

By Mr. Correa:

Q. Were you not in connection with that testimony asked the following question, and did you not make the following answer:

2164 "Q. And that is normal procedure for a Shell salesman, isn't it?

"A. Ordinarily, yes."

Mr. Kelaheer: Where is this?

Mr. Correa: Page 613, lines 8 through 10.

The Witness: That's right, I stated that.

By Mr. Correa:

Q. In August 1955 you were engaged in operating a Shell service station, were you not?

A. Yes, sir.

Q. And at that time you had a customer named Stelle, did you not?

A. Yes, sir, I had a customer by that name.

Q. And did you on or about August, 1955, on one occasion sign the name of Mrs. Stelle to a credit slip?

A. Yes, sir.

Q. And that credit slip bore the date of August 5, 1955, did it not?

Mr. Kelaher: Objection. The best evidence is the credit slip itself, if they have it.

Hearing Examiner Kolb: Do you have the credit slip?

Mr. Correa: I don't, if your Honor please. It was not marked in evidence yesterday.

Mr. Kelaher: I object to this question. That is the best evidence. Let them bring the evidence in.

2165 Hearing Examiner Kolb: Read the question.

(Question read.)

Mr. Kelaher: I object unless the document is produced. It is the best evidence.

Mr. Correa: Counsel, we don't have the document, of course.

Mr. Kelaher: How do I know what you have or what you don't have.

Mr. Correa: You were here as counsel when this examination was conducted in the other case. Why should we play games about that?

Mr. Kelaher: We are not playing games. I don't have the slightest idea of what you have in your possession. I

never had any conferences with you about it. That clearly comes under the best evidence rule. If they don't have the document, I am going to object to this line of questioning.

Hearing Examiner Kolb: Mr. Correa, you were objecting to influences on other cases, so I would have to rule here that the document is the best evidence.

Mr. Correa: I suppose consistency between rulings in various cases is perhaps one thing that militates or acts in favor of my argument rather than against it.

Hearing Examiner Kolb: No, I know nothing about other cases. The document is the best evidence.

Mr. Correa: I may submit, if your Honor please, 2166 that while counsel would be quite right about the best evidence rule as applied to evidence being proffered in support of a party's case, a claim, that I had never understood the best evidence rule to apply in that manner to cross-examination obviously designed solely for impeaching purposes and addressed solely and simply to credibility.

Hearing Examiner Kolb: You are attempting, apparently, to show that the man has forged a person's name to a document.

Mr. Correa: No, I am not.

Hearing Examiner Kolb: You asked if he signed her name to it.

Mr. Kelaher: That is the clear purpose of the testimony.

Hearing Examiner Kolb: The minute you do that I think you are getting into something that is very, very serious.

Mr. Correa: If your Honor please, that is the trouble of these cases being mixed up, because as near as I could tell—

Mr. Kelaher: There is nothing mixed up.

Mr. Correa: Please, counsel, let me finish.

As near as I could tell, as a spectator at the other hear-



ing yesterday, that may have been the purpose of cross-examining counsel there. I won't speak for him because I don't know. But I will disavow that purpose for myself in this case. I wish merely to test the witness's credibility on the basis of what he had to say about this trans-  
2167 action, and how that stacks up with what he might have said on some other occasion about the transaction, also, however, under oath. Other than that, I have no interest in the transaction.

Mr. Kelaher: Your Honor, I might state that I am somewhat astounded by counsel's re-writing of Wigmore so glibly with respect to the best evidence rule. The best evidence rule applies on direct as well as on cross-examination.

Hearing Examiner Kolb: Read the questions.  
(Questions read.)

Mr. Kelaher: And I objected, because he is asking about a document which they do not have and which they cannot show the witness.

Mr. Correa: I will withdraw the question and get at it another way.

Mr. Kelaher: I will put you on notice that I will object to the line you are about to undertake.

Mr. Correa: You could have saved yourself the trouble. I sort of guessed that.

By Mr. Correa:

Q. When did you write Mrs. Stelle's name on this slip?

Mr. Kelaher: Objection, your Honor. He is just circumventing your Honor's ruling, that is obvious.

Hearing Examiner Kolb: I will let the witness answer.

Mr. Kelaher: I beg your pardon?

2168 Hearing Examiner Kolb: I will let the witness answer.

Mr. Kelaher: Let the witness answer? Here we are

talking about a document which no one has put in evidence in this case and we are attacking a man's credibility, I presume.

Mr. Correa: That is "testing", a much nicer word.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Read the question.

(Question read.)

The Witness: Before I answer this question, I would like about two or three minutes to explain Mr. and Mrs. Stelle's activities at my station.

By Mr. Correa:

Q. I think you will get that opportunity on redirect.

Mr. Kelaher: Let him answer now.

Hearing Examiner Kolb: I think as long as we are going at it without the document, we might let the witness explain what happened.

Mr. Correa: All right.

Hearing Examiner Kolb: Then, go on from there.

The Witness: Mr. and Mrs. Stelle and their two children trade with me at the Shell station, and my station was in a small shopping center. They was always in a hurry.

They would come in and drive their car up to the 2169 pumps and they would say, "Fill her with gas and service it, give it whatever it needs." We would make out the tickets and walk back in the station and Mr. Stelle would come and get in his car and pull off.

Then, he would come back, maybe in three days or four, I would hold the ticket for him, and I would say, "You didn't sign your last ticket," and he would say, "Why don't you sign it, it saves me time." Didn't even take his dupes.

Now, on this particular invoice that you are asking me

a question about, I can't say whether that was on their Cadillac or their Plymouth station-wagon, but they did get the service performed, and as a usual rule applied, after they didn't show up on their trip to Florida, I went ahead and signed their receipt at the station. Before that they had no objection to it, and I can clarify that by Mr. Sielle, if we had him here.

He was one of those customers who put his trust in me, but counsel seems to make an issue that I am a forger.

That is all I have to say.

Mr. Kelaher Very well said.

Mr. Correa Just for the record, I move to strike the last statement of the witness as being unresponsive to any question.

Mr. Kelaher: It couldn't be more responsive.

Hearing Examiner Kolb: I will let it stand.

2170 Mr. Correa: I also move to strike the comments of counsel as being designed to only obfuscate and prejudice a fair trial of this matter.

Hearing Examiner Kolb: Let's go ahead.

By Mr. Correa:

Q. When did you sign this slip?

A. I signed it on the day, the date it says.

Q. What date do you recall as being the date you signed it?

A. 8/5/55.

Q. August 5?

A. 8/5/55.

Q. When was the work done?

A. The work was done about—I can't say exactly but it was two or three weeks prior to that, which the original ticket was lost and I made that up from memorandum.

Q. And you made the one that was signed on August 5th up from what did you say?

A. The original ticket was lost. This ticket that you have here as an exhibit was made from memorandum. The original was lost.

Q. You have testified heretofore about this matter, have you not?

A. I have.

Mr. Kelaher: He hasn't testified in this case, your Honor.

2171 The Witness: I didn't get a chance to explain like I have today.

By Mr. Correa:

Q. You have testified on direct, have you not, that the work that was entered by this slip you signed was performed on August 5th?

Mr. Kelaher: Objection, unless he identifies the record he is referring to, and the page and citation.

Mr. Correa: I am referring to the record in 6487. I think you will find his testimony at page 624.

Mr. Kelaher: Your Honor, I think he has given a full explanation of it. I am going to object to any further examination of the witness on this point.

Hearing Examiner Kolb: I think, Mr. Correa, that that testimony is so confusing that it would be better for you to bring it out on your own cross-examination.

Mr. Correa: If your Honor please, the only purpose of my cross-examination at this time was to show that this witness had successfully given different and conflicting explanations of this incident. And they were given under oath and in a proceeding very similar to the proceeding in which we now are. I raise this defect in his credibility. I am not interested in trying to establish that he was a forger or anything, or that he misappropriated \$5.00 and  
2172 whatever number of cents it was at all. But I am  
his testimonial qualifications.

Hearing Examiner Kolb: The difficulty that I see is the fact that we had conflicting testimony which you are going into; you are selecting a one part and not the other.

Mr. Correa: The conflict is all of the witness's own statements with each other. There is no other testimony.

Mr. Kelaher: I object to that line of testimony.

Hearing Examiner Kolb: He can read what he wants to and you can read what you want to, and we will go ahead on it.

Mr. Kelaher: I think it is obvious it is just time consuming.

Hearing Examiner Kolb: It is time for adjournment anyway. Let's adjourn until 1:30.

(Whereupon, at 12:22 p.m., the hearing was recessed to reconvene at 1:30 p.m.)

(1:30 P.M.)

Hearing Examiner Kolb: The hearing will be in order.

WILLIAM E. EDWARDS resumed the stand as a witness for the Commission and, previously having been duly sworn, was further examined and testified as follows:

*Cross-Examination Resumed by Mr. Correa.*

Q. The question on this Stellar thing was, didn't you testify heretofore under oath that the services represented by the credit card slip were rendered on August 5, 1955?

A. We are still on the Stelle case?

Q. Yes.

Mr. Kelaher: I think counsel referred to it as the "Stellar" thing, which is an apt description.

A. The credit slip was made out on the 5th of August, yes, 1955.

By Mr. Correa:

Q. And you told us the services were rendered two weeks before that?

A. Yes, sir; approximately.

Q. But you have testified under oath that they  
2174 were actually rendered on August 5?

A. I have testified that way, but it wasn't that way.

Q. When were you given permission by Mrs. Stelle to sign the credit card in her name, or her husband's name?

A. As I stated awhile ago, I had authority to sign those cards when they didn't come in to sign them.

Q. Very general authority?

A. General authority.



Q. But there was no specific permission given in this case?

A. No specific permission.

Q. You have testified heretofore under oath, did you not, that you were given specific permission to sign this card on August 5?

A. Heretofore I gave that testimony.

Q. That is not correct?

A. That is not correct.

Mr. Kelaher: Objection. He hasn't testified in this case to that effect. Let's keep the record straight. He has testified somewhere else. Let's find out where it was.

Mr. Correa: If he testified under oath, and the witness says he has, I think that is relevant on his credibility.

Mr. Kelaher: I think it should be designated.

2175 Mr. Correa: The record in 6487, page 624, you will find both points last covered, counsel.

By Mr. Correa:

Q. Is it true that the work was performed two weeks before August 5, 1955, and that you held the ticket for two weeks and then signed it?

A. No, that isn't true.

Q. Did you so testify, page 626?

A. The work was performed, and I so testified that the original ticket was lost.

Q. Did you testify that the work was performed two weeks before August 5, and that you held the ticket for two weeks and then signed it?

A. I will say Yes to the first sentence. The second sentence I remember saying that the ticket was lost.

Q. I direct your attention to page 626 of the testimony, in docket 6487, and ask you if you weren't asked the following questions and didn't you make the following answers with respect to this Stelle incident:

"Question: Did you ever tell Murray that the

work was performed about two weeks earlier before she left for Florida, and that you held the ticket for two weeks and then when she didn't show up you signed it?

"Answer: I believe that is correct.

"Question: Is that correct?

2176 "Answer: I believe that is correct.

"Question: Now is that your testimony now?

"Answer: That is my testimony."

Q. Were you asked those questions?

A. That is my testimony in that paragraph but if you go on down, where me and Simon had the little argument, that I did say that the ticket was lost.

Q. You think you changed your testimony subsequently?

A. In the same book, the testimony is changed.

Mr. Kelaher: I think he is right, too. I think it will appear.

Mr. Correa: Yes, and I think as a matter of fact I will stipulate and concede that he changed his testimony on that point, as well as other points relative to this incident at a later stage—

Mr. Kelaher: He corrected his testimony.

Mr. Correa: (Continuing.) —in the same examination.

Mr. Kelaher: He corrected his testimony.

Mr. Correa: I submit he changed it.

Mr. Kelaher: You can—

The Witness: I corrected it today.

By Mr. Correa:

Q. Is it the fact, sir, that you wrote out a ticket on this work at the time it was done, two weeks before  
2177 August 5, and thereafter the ticket was misplaced and didn't turn up until two weeks later?

A. That is correct.

Mr. Kelaher: That is not what he testified to earlier.

He never has stated that the ticket turned up two weeks later. He hasn't said that yet. He said he made out a new one.

The Witness: That is correct. I said I made out another ticket and that is correct.

By Mr. Correa:

Q. What is the fact?

A. You are asking me so many questions that I can't give you correct answers because you are mixing me up with the questions.

Q. I just want the facts.

A. You are getting the facts eventually. It is like the equation when you put the equal sign back of it you get a correct answer, and that is what we are building up to.

Q. How about this question: Is it the fact that the ticket for the work was written up two weeks before August 5, and thereafter it was misplaced and turned up two weeks later? Is that the fact or not?

A. That is not correct.

Q. Did you so testify?

A. No.

2178 Q. I direct your attention to page 627 of your examination yesterday in docket 6487, and ask you if you were asked the following questions and did you make the following answers:

"Question: You made the ticket out and held it two weeks and she didn't show up and you signed it?

"Answer: Then she never did come back to the station.

"Question: Well, did you call her up the day you signed it?

"Answer: No, I recall now I didn't call her. It was verbal authority, when she—I was taking the car.

"Question: Why did you hold it for two weeks then, if you had had her verbal authority to sign it?

"Answer: It was misplaced in my desk, and I finally located it among my papers. That is the way it was."

A. It was either misplaced or we have located it. We have established that as a fact.

Q. Were you asked those questions and did you make those answers?

A. I was asked those questions and gave those answers.

Q. You are now telling us it is not correct?

Mr. Kelaher: His answer states what it is.

2179 By Mr. Correa:

Q. Are they correct or not?

A. I gave an answer.

Mr. Kelaher: May I have it read?

(Answer read.)

By Mr. Correa:

Q. Were those answers you gave at page 627 of the record, in docket No. 6487, true or not true, sir?

A. That was testimony as of yesterday.

Q. And I take it the testimony as of yesterday is not necessarily true?

Mr. Kelaher: Objection, your Honor. That is a very unfair remark.

Hearing Examiner Kolb: Overruled.

Mr. Correa: I have no further questions.

### *Redirect Examination.*

Mr. Kelaher: Your Honor, may we have about five minutes before going on with our redirect? There was quite an extensive cross-examination. We got into the Roosevelt committee hearings, we got into docket 6487

hearings and I think there was some reference to docket 6486 along the line.

Mr. Correa: What is docket 6486?

Mr. Kelaher: The Goodyear case.

Hearing Examiner Kolb: Very well.

(A short recess was taken.)

2180 Hearing Examiner Kolb: The hearing will come to order.

*Redirect Examination by Mr. Kelaher.*

Q. Mr. Edwards, based on your experience as a district sales representative and as the operator of a Shell service station, what is the largest volume item insofar as TBA is concerned? By that I mean tires or batteries or accessories. Which is the largest of the three?

A. Tires.

Mr. Correa: Does this mean volume dollarwise?

By Mr. Kelaher:

Q. Dollarwise?

A. Either way.

Q. Unit-wise or dollar-wise?

A. Unit-wise or dollar-wise tires is the biggest deal.

Q. Do you have any approximation of what the percentage to total TBA would be of tire sales dollar-wise or unit-wise?

A. You mean average per unit per station?

Q. No, the percentage in relation to total TBA. In other words, if you take your tire sales and relate it to total tires, batteries and accessories, approximately what would be the percentage?

A. I would say, if you divide it 100 percent—I am speaking of tires, batteries, tubes—

2181 Q. Tires and tubes?

A. Tires, tubes, batteries, and the allied line that goes with it. That is car and home supplies, not accessories.

Q. I am talking now about accessories as spark plugs, oil filters, accessories which are in the Goodyear TBA line, and not mufflers or brake shoes or items which you may refer to as accessories but which are not involved in this proceeding.

A. Specifically, then, I would say that your tires would be about 33 percent, and that your tubes and batteries would be about 10 percent, and that the rest of the line, which falls under filters and spark plugs and things of that nature, would make up the rest of the hundred percent.

That makes 55 percent, doesn't it, total, on all other lines except tires?

Q. Are you including in other lines—what accessories are you including in your total figures?

A. I am including in the 55 percent filters, spark plugs, battery cables, fanbelts, and hose.

Q. Was that the percentage at your particular station?

A. That was my percentage at my particular station.

Q. Would it vary at other stations? Would there be a higher percentage of tires or batteries at other stations?

A. Not unless he was doing more gallons of gasoline than I was. If he was doing less gallons, then the 2182 percentage wouldn't change but the volume would.

Q. Mr. Edwards, you were examined by counsel for respondent Goodyear with respect to your testimony before the Roosevelt Committee. I would like to read from page 54 of your testimony on April 30, 1957, and I quote:

“The Shell Company forces dealers to handle Goodyear tires and batteries, even though in my station,



for example, I was not on a commission basis for TBA. Shell threatens lease cancellation if you handle any other line."

I notice that you refer only to Goodyear tires and batteries, is that correct?

A. That is right.

Q. And you did not mention accessories in your testimony before the Roosevelt Subcommittee, did you?

A. No, I didn't.

Q. Is that statement a correct statement that you made before the Roosevelt Subcommittee with respect to Goodyear tires and batteries?

A. I would say that it was partly right. I think it is a fact that Shell gets 10 percent on even the allied lines with tires and batteries, which would include filters, fan-belts, and radiator hose.

Q. It would include accessories?

A. It would include accessories.

2183 Q. When you were talking at page 56, "At the station I handled I was a Shell man through and through, I mean, I sold, talked, and slept it and I went along with the policy to the letter. I didn't handle any other lines. They didn't force me there because I didn't handle any other lines." Were you referring to tires and batteries or tires, batteries and accessories?

A. I was referring to the tires and batteries and accessories that I stocked, not the tires that I went on the phone and called up for to get for customers that wouldn't take Goodyear.

Q. At your station you stocked what brand of tires?

A. Goodyear.

Q. And what brand of batteries?

A. Goodyear.

Q. On the accessories did you stock any Goodyear accessories?

A. Yes, sir.

Q. You did?

A. I stocked fanbelts and hoses and tubes and ply-bond glue. I stocked some of their polish. I believe once I even ordered some seat covers from Goodyear, and deflectors, and rear view mirrors and that sort of thing.

Q. And they were all part of the Goodyear TBA line?

A. Yes, sir.

2184 By Mr. Kelaher:

Q. Mr. Edwards, did you at any time have conversations with Shell representatives concerning non-sponsored TBA which you carried in your "C" station?

A. Yes, sir.

Q. Would you please state did you have such conversations with Mr. Murray?

A. Yes, sir.

Q. And do you recall any conversations that you had with Mr. Murray concerning the matter?

A. Yes, sir.

2185 Q. Would you please state what they were, and the approximate time of the conversation?

A. The date was approximately about July 1955. Murray made a sales call at the station, and that day I happened to be mounting some U.S. Royal recaps. And he wondered and questioned me why I was doing this and I hold him that the Goodyear camelback, on their recaps, wasn't holding tread and they wouldn't make their adjustments, so I had to go to buying U.S. Royal recaps. And he instructed me that I would go back on the Goodyear recaps in view of the fact that he was getting a commission and it helped his territory. So I told Mr. Murray that I would then go back to Goodyear recaps.

Q. Did you go back to Goodyear recaps?

A. I bought some after that, but they didn't hold up, so then I went back to U.S. Royal again.

Q. Did Mr. Murray in turn make any reports to your knowledge to the district manager or sales supervisor concerning this matter or any similar matter concerning non-sponsored TBA?

A. He wrote a letter in to Mr. Paney.

Q. Is this concerning this specific incident you are referring to?

A. Concerning this specific incident, he wrote a letter to Mr. Paney on it which later in a sales meeting was brought up.

2186 Q. Where was the sales meeting held?

A. ~~It was held~~ in Evansville.

Q. Were you present at the sales meeting?

A. No, sir, it was passed on to me by a sales supervisor.

Q. Who was the sales supervisor?

A. Mr. Jessup.

Q. When did you talk to Mr. Jessup concerning the matter?

A. This was about October of '55.

Q. What did Mr. Jessup say to you?

A. He told me to stick with the Goodyear line.

Q. Could you remember anything else he told you at the time concerning the matter? Was that the substance of his conversation?

A. That was the substance of his conversation.

Q. Could you state more accurately what he said to you?

A. He was with Mr. Murray and he told me that he was backing up Bob on the fact that I was selling a non-competitive item, and that he wanted me to stop it, so I told him that I would, which I did.

Q. Mr. Murray was with Mr. Jessup when you had this conversation?

A. Yes, sir.

2188 By Mr. Kelaher:

Q. On cross-examination you were questioned about a station operator by the name of Mr. Bartl, a Shell service station operator who at one time was in your territory, is that correct?

A. That is correct.

Q. And do you know why he left the station?

A. Yes, I do.

Q. Would you please state what you know about the matter?

A. Jim's service station—Bartl—B-a-r-t-l—was taken under observation for approximately six months, and two different—one different man besides myself tried to upgrade Jim to get him to do a better job.

About two months prior to Jim's leaving the Shell station I had a consultation with him one afternoon and I handed him a lease cancellation paper which, when a dealer signs a lease cancellation paper, he gives up the rights to the service station.

At that time, I tell him that I am going to look for another man to replace him, which then you start looking. And ordinarily the "L" dealer will stay in that station until you get a dealer because he likes to get his investment out of that station.

So, in about two months before his ending date, I located a dealer by the name of Harry Scott, who came to Shell with \$1500. He needed twenty-five to buy Bartl out, 2189 which he didn't have. Mr. Waelde, who was then the immediate merchandising representative told Mr. Bartl that he would have to take that thousand dollars

worth of equipment and accessories with him, which he done.

And that is the story on Mr. Bartl.

Q. What brand of TBA did the incoming dealer, Mr. Scott, stock?

A. Mr. Scott stocked Goodyear.

Mr. Kelaher: At this time, your Honor, I would like to introduce Commission's Exhibit 349 into evidence.

Mr. Correa: No objection.

Mr. Kelaher: This was formerly identified as RX-4 for identification.

Hearing Examiner Kolb: There being no objection, the document will be received in evidence as Commission's Exhibit 349.

Mr. Ballard: Subject to a motion to strike by Atlantic?

Hearing Examiner Kolb: Subject to a motion to strike by Atlantic.

(Whereupon, the document referred to, COMMISSION'S EXHIBIT 349, was received in evidence.)

Mr. Kelaher: If agreeable with counsel, we would like to furnish a photostatic copy for the record.

Hearing Examiner Kolb: A photostatic copy may 2190 be substituted.

By Mr. Kelaher:

Q. I show you Exhibit 349, a copy of a letter sent to you by Mr. Pavey, district manager, dated June 2, 1954, and ask you if Mr. Pavey, whose name appears on that letter, is the same Mr. Pavey who was your superior when you were a Shell employee?

A. That's right, sir.

Q. And were copies of this letter sent to other new Shell dealers in your territory?

A. Every Shell dealer got a copy of this letter, the same letter.

Hearing Examiner Kolb: Is it Exhibit 349 you are questioning the witness about?

Mr. Kelaher: I am showing the witness Exhibit 349.

By Mr. Kelaher:

Q. Mr. Edwards, I would like to read from the third paragraph, first sentence, of Commission's Exhibit 349:

"We are also proud of the full line of gasolines, motor oils, grease, and specialties we are in a position to supply you, and of the quality tires, batteries and accessories readily available to you through our arrangements with Goodyear."

Were the dealers advised what arrangements Shell had with Goodyear concerning TBA?

2191 A. Yes, sir.

Q. Did they know whether or not a sales commission was being paid to Shell by Goodyear?

A. That wasn't mentioned to the dealers, that Shell received a commission. It might have been in a few cases, but nobody ever complained about it. No dealer that I ever had any contact with.

Q. But it wasn't made known in a letter that the commission was being paid to Shell?

A. No, it wasn't made known in writing.

Q. On cross-examination you were asked whether you had purchased certain products from a list of jobbers in your area when you were operating your "C" station. What products did you purchase from Hoosier Auto Parts?

A. I purchased all of my carburetors from them.

Q. Would they be referred to as so-called hard parts?

A. That would be a hard part, yes, sir.

Q. And would carburetors be included in the Goodyear TBA line? Or accessories?

A. They might have been in the line, but a Shell dealer couldn't stock them, because it would involve too much



money first of all, and secondly, you would have to have them shipped in from Chicago and you would have to carry such a tremendous stock it wouldn't be advisable to buy them from Goodyear.

2192 Mr. Kelaher: Your Honor, on this point I think the record will show that this item was not in the Goodyear TBA line, carburetor parts. So-called hard parts were not in the Goodyear TBA line. I don't think there is any—

Mr. Correa: I don't know that, if your Honor please. Certainly I don't know about so-called hard parts. As to carburetors, specifically, I should have to look that up. That is assuming our records show anything on that. And I don't know whether it is our record that he is now talking about or the record in another case. Whatever the record shows, it shows, and I am sure that is what governs us all.

By Mr. Kelaher:.

Q. Did you purchase items such as mufflers, brake shoes, and items of that type which are generally known in the trade as hard parts, from these various jobbers whom you were asked about this morning?

A. I purchased mufflers, brake shoes and tailpipes, clamps, gaskets, exhaust gaskets, and tailpipe hangers from, majorly, Gibsol and Son, Hoosier Auto Parts, and Smith and Decker, and Terre Haute Battery. Those are the four companies that I purchased that kind of merchandise from.

Q. Wouldn't the bulk of your purchases be hard parts from those suppliers?

A. I would consider those all hard parts. If you buy a new car at a car dealer and you want accessories  
2193 put on that car, you get floor mats, radio aerials, rear view mirrors, and tail pipe deflectors. And that

is what I have been trying to clear up here for two days, that that is accessories, and what we are talking about now is hard parts.

Q. And that is what you were purchasing primarily from these other jobbers?

A. That is correct.

Q. Mr. Edwards, this morning you were questioned about certain documents identified in the record as RX-7-A through 7-Z, entitled "Monthly earnings statement for commission stations," which reflect operations, or purportedly reflect operations in the 25 months operation of your service station.

On each of those forms there is an item entitled "Accessories and car and home supplies." I would like you to explain as well as you can what goes into that column.

A. At the Shell "C" station we had a form called a daily check-out. Included in that form was several divided columns with headings. On that form you would keep your pump readings from day to day, your motor oil sales day to day, your service and labor income day to day, your credit cards, your personal charge, your purchases of products, and also, which would be classified under "paid-outs." I have omitted one column, which that would be accessories, car and home. Under this accessories, car and home, column you had only one place to put down what you did on a car or what you sold 2194 on that car. That is what went on the car. That would be, let's say, a carburetor, a set of points, plugs, a condenser, maybe a U-joint, maybe a muffler, maybe a tailpipe, maybe a battery, maybe a set of tires. That all would be included under "accessories, car and home."

In other words, the Shell Oil Company daily check-out system was not up to date, so I can't be held under conviction of misrepresenting here. That is what I want to get through.

Q. We just wanted to clarify what was in your accessory column. I take from your answer that it includes items other than accessories items included in the Goodyear TBA line or comparable items?

A. It includes all sales that went on a car except service and labor. And that is where that \$2,200 came in in the conversation in the hearing yesterday.

Q. It is a very broad category.

A. It is a broad category, yes, sir.

Q. I noticed in your answer you referred to a daily check-out sheet. Is that the terminology used in your marketing area?

A. The daily check-out sheet, they came in pads about that thick (indicating). That you used as a cash register. You wasn't allowed to have a cash register at a "C" station, so we used that pad for your own register. In other words, everything that you sold through the 2195 station except gasoline and motor oil was written down, just like you would write it on the tape of a cash register. But your motor oils and your gasoline was inventoried every day. And that was pulled in, when you made your daily check-out then you figured your gasoline and motor oil along with your daily check-out.

Q. On cross-examination a number of excerpts were read from a document entitled, "Booklet for marketing personnel in L-type stations, revised edition, August 1955," which was issued after you left your employment as a Shell district sales representative.

In the course of that testimony there were a number of statements read from that particular booklet. I am not going to go over each and every one. There are a few points I would like to question you about.

Mr. Correa: I would like to object to counsel's statement because in point of fact it is inaccurate. On cross-examination nothing was read from that booklet.

Mr. Kelaher: So there will be no misunderstanding, the statements were read from the transcript in Docket 6487, which in turn were read from that booklet by Mr. Simon.

Mr. Correa: Which in turn, I submit, does not appear of record, and I do not personally know it to be a fact.

Hearing Examiner Kolb. The questions asked at these proceedings are, do those statements appear in the booklet he had at the time he was operating.

2196 By Mr. Kelaher:

Q. During cross-examination reference was made to Pages 571 and 572 of Docket 6487, and one of the statements which you were asked about this morning by reference to Pages 572 and 571 includes this statement:

"After the leases have been signed, Shell's control has been relinquished and the future of the station depends upon the lessee voluntarily carrying out the merchandising policies recommended by Shell, not because he is obligated to so operate his station but because he remains persuaded that such policies are for his own best interests."

Now, I ask you, after the lease has been signed, did you, as a district sales representative, have control over lessee stations?

Mr. Correa: That is objected to as calling for a conclusion.

Hearing Examiner Kolb: The objection will be sustained.

By Mr. Kelaher:

Q. Were the oral instructions you received from Mr. Payey, your district manager, and others in the Shell organization, including those of the division level, consistent with this statement or in conflict with it?

Do you understand the question?

2197 Mr. Correa: I think, if your Honor please, the question is objectionable, except perhaps it is a summary. Actually I take it his instructions speak for themselves, and the statements in the record speak for themselves, and it is really your Honor's function, not the witness'.

Hearing Examiner Kolb: Read the statement.

(The reporter read the question.)

Hearing Examiner Kolb: Consistent with which statement?

Mr. Kelaher: With the policy statement which was so elaborately gone into this morning.

Hearing Examiner Kolb: Objection overruled.

The Witness: This policy that is in the book looks mighty good on paper, but as far as oral orders in the field, when we was asked to put pressure on a dealer to get Goodyear tires in, that is what I had to do.

By Mr. Kelaher:

Q. Does that refer also to Goodyear batteries and accessories?

A. That also referred to Goodyear batteries and tires and tubes, and accessories where the man had money to stock them.

Q. This morning on cross-examination you were given a list of—given the names of fifteen former dealers whom you had in your territory, and you were asked certain questions concerning their TBA ratio per thousand gallons.

You stated, in answer to those questions, that those 2198 figures, to the best of your knowledge, referred to figures which came to your knowledge at a December 1953 meeting; is that correct?

A. That is correct.

2199 Q. Where was that meeting held, and would you explain something about that particular meeting?

A. That was a year-end meeting where the district met with the division level. Three days prior to your division meeting you would sit in an office and go through your, what we call, the black book, and post all of your totals for the year, gasoline, motor oil, specialties, greases, gear oil, tires and batteries and accessories was posted on a card as to how much dollar volume went through the station. Then, at a given night during that week, we would have a meeting with the division level and each product would be on a card which we would exhibit in front of the group, and we were asked questions as we progressed along these products, what we was going to do to improve our quotas for next year. They set our quotas for us. We would tell them what we thought we could sell and then they would tell us how much increase they wanted us to sell, and that is about the way it went.

Q. Did the figures which were read off to you this morning refer to sales of Goodyear TBA exclusively per thousand gallons?

A. That is correct.

Q. And you were asked at the meeting to increase the sales of Goodyear TBA by these dealers?

A. Only tires and batteries was majorly talked about, and fanbelts and radiator hose. Anything else under accessories was not pushed, or approached to me to sell.

2200 Q. Would you state the type of dealer these particular individuals were? I can give you the names, and just ask you to state whether they are an "L" dealer, "DL" dealer or what.

Krauche?

A. He was a "L" dealer.

Q. Whetsell?

A. Whetsell was a "DL".

Q. Scott?



A. Scott was a "L".

Q. Cole?

A. Cole is a "DL".

Q. Rader?

A. Rader was a "L".

Q. Conrad?

A. Conrad was a "L".

Q. Bartholome?

A. Bartholome was a "DL".

Q. Miller?

A. Miller was an open dealer.

Q. That means he owned his own station?

A. He operated the station for another party, but he had control of the lease.

Q. Mikels?

A. "DL".

Q. Drake?

2201 A. "DL".

Q. The next name, Morris?

A. Moris was a "DL".

Q. Cagle?

A. Cagle was a "L".

Q. Fortin?

A. Fortin was a "OD".

Q. Garzolini?

A. "L". And you missed Borden, who was a "L".

Q. You weren't asked about Mr. Borden but he was an "L".

A. Yes. He was the biggest TBA account we had.

Q. And what was his approximate TBA volume per thousand gallons, do you recall?

A. He did \$25,000 worth of TBA a year, and you can divide that by \$8,000 to get the dollar volume if you wish.

Q. Do you mean by 8,000 gallons or \$8,000?

A. 8,000 gallons of gasoline, divide that into the \$25,000

and that gives you the breakdown of dollars per month per gallon.

Q: 8,000 a month times 12. That would be 96,000 gallons into \$25,000, would give you—

A. That's right. 96,000 gallons into \$25,000.

Q. Mr. Edwards, during the period when you were a district sales representative—and I would like to ask you to state again how long a period that was. First 2202 I would ask you to state how long a period you were a district sales representative. There seems to be a little—

A. There is a little difference on that.

Q. Did you begin in 1950 as a district sales representative?

A. 1950, I believe it was along about April or May.

Q. April or May, 1950. Then, you continued on until May 16, 1954, is that correct?

A. They said yesterday in the testimony that I was only a sales representative two and a half years.

Q. Is that correct or incorrect?

A. I would rather take their word for it. Their records, they would be right, rather than me.

Q. Then, when did you begin with Shell? Was it in 1950? When did you begin to call on stations?

A. That is when I thought I begin to call on stations, but they contradicted me yesterday on that.

Q. They didn't, as I understand it, present any records to you to contradict you. Your best recollection is 1950 through May, 1954?

A. Yes. I thought it was three and a half years, instead of two and a half years.

Q. During that time, how many service stations in your various territories—yesterday you described you had three territories at various times, or just an expansion and contraction of the same territory—how many service sta-

tions changed hands during your period as a district 2203 sales representative?

A. I had one in Spencer, which is Lewis Overpeck; then I had one in Terre Haute, Jim Bartz, I had Bill Rader. That will have to be clarified. He has been a Shell dealer there for about six years. He formerly managed it for A. Grossback, who owned all the equipment in there, and then we kept putting pressure on the diversified operation whereby we finally got Mr. Rader to go borrow the money to buy out Grossback.

Q. So that would be another one?

A. That would be another one.

Q. Where is he located?

A. Terre Haute, Indiana; Bill Rader.

Now, we move on down. I had no changes in Sullivan; I had none in Linton; I had none in Bloomfield; I had none in Bedford; I had none in Vincennes and I believe that is the extent of those.

Q. On cross-examination by counsel for respondent, Goodyear, you stated that when you were a "C" station operator you were approached by representatives of other oil companies prior to the time you left your station. I believe you stated that representatives of the Ohio and Emblem Companies contacted you?

A. Texas.

Q. I beg your pardon.

A. The Ohio Company and the Texas Company.  
2204 They told me, in other words—

Q. What was the conversations that you had with these gentlemen?

A. They told me that I was going to lose my station and that is why they was there, to try to get me to take one of their stations.

Q. Is that the first notice you had that you were going to lose your "C" station?

A. That is correct. I never did get any written notice. Finally, I think that was on a Monday, and on Wednesday I got ahold of Mr. Murray and told him that he was going to tell me what was going on or he and I wasn't going to get long.

So, after about 30 minutes of arguing with him, we went to the car and took a ride and he told me that Saturday would be my last day. He asked me if he could check me out on a Friday, and I told him No, and he wanted to know why, and I said because I can't check out that fast, and because I have nowhere to go.

Q. And I said, "If you will give me until Saturday, which it has to be that way, we will check out Saturday." So, that is the way we set it up.

Q. So that you didn't attempt to find other employment until you had learned that you were losing your "C" station, is that correct?

A. That is correct. I never would have left there if they hadn't put me out.

2206 By Mr. Kelaher:

Q. Among other items, you were questioned on what counsel has aptly described as that "Stelle thing."

During the course of your testimony with respect to that "Stelle thing" you stated what you believe to be the correct facts of the situation?

A. That is correct.

Mr. Correa: At one point or another.

The Witness: No, it was at one point.

By Mr. Kelaher:

Q. During the course of your testimony with respect to that "Stelle thing", did you correct testimony previously given in Docket 6487?

A. I did correct it.

Q. Was the statement you gave today to your knowledge your most accurate recollection of that thing?

A. That's right, sir.

Q. During the course of your redirect examination, you referred to a check-out sheet, in connection with the basic data for these Exhibits 7-A through -Z?

A. Yes.

Q. What do they call it?

2207 A. A daily check-out sheet.

Mr. Correa: So stipulated.

2208 By Mr. Kelaher:

Q. When you used the term "check-out" in your industry terminology, did that mean that you could be looking at a check-out statement of a particular dealer or—

A. No. That service station daily record, what I call the check-out sheet, is what I mentioned a while ago. It was the same as a cash register to the dealer.

Q. Would you explain what is meant by a check-out?

Mr. Correa: Would you repeat the questions?

(Questions read.)

Mr. Kelaher: There seems to be some confusion about the daily check-out.

The Witness: I think you are talking about the daily service station form that the "C" station uses to check-out its business everyday.

You start with petty cash, which is so much money,—

By Mr. Kelaher:

Q. You used the term "check-out" in connection with your conversation with Mr. Murray, I believe. What would you mean by that? Did Mr. Murray check you out?

A. Mr. Murray—

Q. With respect to certain items?

A. You mean when they relieved me of my duties?

Q. I don't know. You used the word "check-out."

A. I can't get the time element here.

2209 Q. Did you use the word "check-out" at different times for different things?

A. A check-out can be at your business or a check-out can be on a dealer which you are checking.

Q. That is the point. Would you describe what it means in connection with your business, and what you mean in connection with a dealer?

A. A check-out, the daily check-out on a business is the reading of the pumps, the reading of the oil sales, the totalling up of the accessories columns, the service and labor columns, and that all multiplied and added together makes a total. Then, on the other side of the sheet you take your credit cards, your personal charges, your paid-outs and your cash-on-hand and that has to balance the other figures. So that is your daily check-out.

Checking-out a business is like Mr. Murray came and told me that he was going to check me out, so then in that instance, it is used in terms of taking the actual inventory at the station of merchandise and equipment, and motor oil, and totalling that all up, and that is what the incoming dealer would owe me when I was leaving.

Q. So, you have the daily check-out and the final check-out?

A. Yes, sir.

Q. Would that describe it?

A. That would describe it fully.

2210 Q. Mr. Edwards, in your testimony before the Roosevelt Committee, you stated—during that period, you stated, "From 1947 to 1954 I was the Shell district sales representative in Terre Haute," and you corrected that to read from 1950 to 1954.

Mr. Correa: If he means corrected it vis a vis the



Roosevelt Committee, I submit, your Honor, there is no such proof.

Mr. Kelaher: I didn't imply that. I said he corrected that at this hearing. You could conclude that.

Mr. Correa: You omitted it from your statement. I want to be sure what you meant.

By Mr. Kelaher:

Q. "During that period, I handled eight Shell dealer check-outs. In most cases the dealers took a great loss upon leaving. Often they were not given a fair price for their inventory. When a dealer signs the release he has no say about the price to be paid him for inventory and equipment. Usually the dealer does not understand that at the time of signing," and so on.

"One of the dealers I checked-out was Bruno Garzolini, at 17th and Poplar, Terre Haute; another was James Bartl, Ninth and LaFayette," and so on.

Would you explain that testimony?

Mr. Correa: I object to that question, your Honor. I submit it is nothing to explain. Counsel reads some 2211 testimony and says explain it. I don't know what that kind of question means.

Mr. Kelaher: I submit, your Honor, that the term—he said "one of the dealers I checked-out was Bruno Garzolini, 17th and Poplar, Terre Haute." He testified that there were daily check-outs and there are final check-outs. I would like to know which he is referring to.

Mr. Correa: If your Honor please, really—

Hearing Examiner Kolb: I think you are just confusing us a little more, Mr. Kelaher. The witness has already stated that that was an error, that he had not checked-out. He only checked-out one.

Mr. Kelaher: The transcript shows he did have a daily check-out on Garzolini at one time. I think he is entitled to explain what he meant.

Hearing Examiner Kolb: All right. An explanation probably won't help any.

The Witness: Garzolini was a misstatement. I didn't check him out. But Jim Bartl, I did check Jim Bartl out. By check-out I mean taking and selling his station to Harry Scott.

By Mr. Kelaheer:

Q. You were referring to the final check-out?

A. The final check-out.

Mr. Kelaheer: No further questions.

2212

*Recross Examination by Mr. Correa.*

Q. Isn't it the fact, Mr. Witness, that of your accessories line, regarding that as such and separate and apart from tires and batteries, spark plugs and oil filters accounted for about 70 percent?

A. We had quite a discussion about that yesterday. I know we had another one today. I set up a percentage over here where I discussed, where I didn't—did I include spark plugs and filters in this one hundred percent a while ago? I had batteries—

Q. You had a discussion with somebody about this today?

A. Yes.

Mr. Kelaheer: He testified. He is talking about on redirect. I asked him about percentages. He is trying to—we can have it read back from the record if it is important.

The Witness: That is a question he is asking and it has been discussed.

By Mr. Correa:

Q. Is that the fact?

A. It is in the record.

Q. Would you tell me now, your present recollection, sir?

A. I would like to have it read back.

Q. I would like to have your present recollection.

A. I want it read back here.

2213 Q. I am entitled to test your recollection, because if it isn't good, that is important to the trier of the facts here, you see. And I want to see what your present recollection is right now, as you sit there, as to whether regarding your accessories line as such, spark plugs and oil filters accounted for about 70 percent.

A. I said that 55 percent of the accessories line was radiator or hose, fanbelts, spark plugs and filters.

Q. And—

A. And I said that 12 percent—I said that 10 percent—no, I said that 12 and a half percent, to be exact, was battery cables and tubes. And I said that 33 and a third percent was tires and batteries.

2214 Q. When you refer to 55 percent being accessories, you are taking—

A. Spark plugs and filters.

Q. (Continuing.) —a percentage of TBA?

A. That is right, TBA.

Q. My question was, regarding just the accessories part of the TBA, putting to one side tires and batteries, if you regard the accessories as 100 percent, would not spark plugs and oil filters account for 70 percent, approximately, of that 100 percent?

A. You are taking the accessories out of what I originally said?

Q. That is right.

A. And now you are asking me what is the percentage of the accessories line? Yes, that is correct, 70 percent if you leave the tires and batteries and fanbelts and all that out of it.

Mr. Correa: Thank you very much.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all.

(Witness excused.)

2219 Mr. Kelaher: Mr. Examiner, at this time I would like to have certain documents marked for identification which were obtained from either the files of the Atlantic Refining Company or submitted by counsel for respondent in response to requests for such information.

Mr. Ballard: Mr. Kelaher, I don't suppose it makes any difference, but I think some of these were taken from somebody else's files and not ours.

Mr. Kelaher: That is correct.

Mr. Ballard: We are prepared to stipulate the authenticity of them and the fact that we received them and that they possibly are in our files. If you want to correct your statement, some were not taken from our files.

Mr. Kelaher: That is correct. Those that were not taken from respondent Atlantic's files are correspondence between Atlantic and another party, is that correct?

Mr. Ballard: I believe that is correct.

Mr. Kelaher: For identification as Commission Exhibit 350-A and B, Atlantic inter-office memo dated January 6, 1948 from "TBA SJH" to Mr. J. S. Parks, Room 1105, subject: "Tire and Tube Sales."

2220 (The document referred to was marked Commission Exhibit 350-A and B for identification.)

Mr. Kelaher: I offer 350-A and B in evidence.

Mr. Mason: Goodyear objects to the introduction of that document in evidence on the ground it is a wholly internal Atlantic document which on its face antedates any sales commission arrangement by several years.

Hearing Examiner Kolb: No objection by Atlantic?

Mr. Ballard: No objection, your Honor.

Hearing Examiner Kolb: The objection will be overruled. The document will be received in evidence as Commission Exhibit 350-A and B.

(The document heretofore marked COMMISSION EXHIBIT 350-A and B for identification was received in evidence.)

Mr. Kelaher: For identification as Commission Exhibit 351-A through L, a 3-page Atlantic inter-office memo dated June 22, 1948 from "TBA SJH" to Mr. D. T. Colley, Room 1702, subject: "Tires." There are nine pages attached to this memo.

(The document referred to was marked Commission Exhibit 351-A through L for identification.)

Mr. Mason: Goodyear has the same objection as it had with respect to Exhibit 350-A and B. I believe, however, the Goodyear objection is controlled by your Honor's last ruling.

2221 Hearing Examiner Kolb: The objection by Goodyear will be overruled.

The document will be received in evidence as Commission's Exhibit 351-A to L.

(The document heretofore marked COMMISSION EXHIBIT 351-A to L for identification was received in evidence.)

2226 Mr. Kelaher: For identification as Commission Exhibit 354, ARCO inter-office memorandum dated December 21, 1950 from Charles F. Bergh, Purchasing Department, to Mr. S. J. Heideman, Room 1210, subject: "File: Batteries."

(The document referred to was marked Commission Exhibit 354 for identification.)

Mr. Kelaher: We now offer Commission Exhibit 354 into evidence.

Mr. Mason: Goodyear objects to the introduction of this document into evidence as internal Atlantic correspondence and as unrelated to any sales commission arrangement between Atlantic and any major tire company or tire company.

2227 Hearing Examiner Kolb: The objection will be overruled.

The document will be received in evidence as Commission Exhibit 354.

(The document heretofore marked COMMISSION EXHIBIT 354 for identification was received in evidence.)

2243 Mr. Kelaher: For identification as Commission's Exhibit 377, ARCO tabulation prepared in response to request of counsel supporting the complaint, entitled "Atlantic, Goodyear TBA Sales, by Class of Trade," for the year 1955.

(Whereupon, the document referred to was marked Commission's Exhibit 377 for identification.)

Mr. Kelaher: We now offer Commission's Exhibit 377 into evidence.

Hearing Examiner Kolb: There being no objection, the document will be received in evidence as Commission's Exhibit 377.

(Whereupon, the document referred to, heretofore marked COMMISSION'S EXHIBIT 377 for identification, was received in evidence.)

2250 Mr. Kelaher: I would like the record to show also that this is an Atlantic document.

For identification as Commission's Exhibit 386, ARCO tabulation issued 11-16-51, entitled "Atlantic Refining Company, sales—Northeast Division by Goodyear Districts, March 1, 1951, through October 20, 1951," prepared by Statistics Division, Sales Accounting Department.



(Whereupon, the document referred to was marked Commission's Exhibit 386 for identification.)

Mr. Kelaher: We now offer Commission's Exhibit 386 into evidence.

Mr. Mason: Goodyear has no objection. I note 2251 this is Page 7 of some other tabulation.

Hearing Examiner Kolb: There being no objection, the document will be received in evidence as Commission's Exhibit 386.

(Whereupon, the document referred to, heretofore marked COMMISSION'S EXHIBIT 386 for identification, was received in evidence.)

Mr. Kelaher: For identification as Commission's Exhibit 387, ARCO intra-company letter dated August 15, 1952, from R. M. Taitt to Mr. L. K. Maisel, Syracuse, New York; subject: "Goodyear Program—Dealers and Supply Points."

(Whereupon, the document referred to was marked Commission's Exhibit 387 for identification.)

Mr. Kelaher: We now offer Commission's Exhibit 387 into evidence.

Hearing Examiner Kolb: There being no objection, the document will be received in evidence as Commission's Exhibit 387.

(Whereupon, the document referred to, heretofore marked COMMISSION'S EXHIBIT 387 for identification, was received in evidence.)

2253 Mr. Kelaher: Mr. Examiner, the following stipulation has been agreed upon by counsel for respondent Atlantic, and counsel supporting the complaint. Counsel for respondent, the Atlantic Refining Company, and counsel supporting the complaint agree and stipulate that if appropriate officers and employees of Atlantic were called as witnesses by counsel supporting the complaint

in this proceeding and asked the following questions, such witnesses would testify as follows; and that the following may be accepted by the Examiner and the Commission for the purpose of its determination and order herein as if such witnesses had so testified and in lieu of such testimony.

The statements set forth below are made solely for the purpose of this proceeding or any review thereof, and for no other action, case or proceeding.

Answers Submitted by the Atlantic Refining Company in Response to F. T. C. Request for Additional Information Concerning Certain Exhibits in the Matter of the Goodyear Tire & Rubber Company, The Atlantic Refining Company, Corporations Docket No. 6486.

2254 CX 84-B (Initials JVP)

Q. "Identify Joseph VanPelt."

A. In August 1952, Joseph VanPelt was Assistant to the Manager of Gasoline, Naphtha and Solvent Section, Domestic Marketing Department, Atlantic.

CX 102 A-D

Q. "Identify T. E. Kelley and K. M. Ford."

A. In August 1949, T. E. Kelley was Director, Organization and Methods Department, Atlantic.

In August 1949, K. M. Ford was Sales Industrial Engineer, Industrial Engineering Division, Atlantic.

CX 110

Q. "Identify G. H. Milligan."

A. In March 1950, G. H. Milligan was Chief Accountant, Chief Accountant's Office, Atlantic.

CX 114 A-D

Q. "Identify G. H. Milligan."

A. In May 1950, G. H. Milligan was Chief Accountant, Chief Accountant's Office, Atlantic.

CX 138

Q. "Identify W. J. Butler."

A. In June 1951, W. J. Butler was Sales Promotion Assistant, Sales Promotion Section, Domestic Marketing Department, Atlantic.

2255 CX 139 A-B

Q. "Identify W. J. Butler."

A. In January 1952, W. J. Butler was TBA Sales Promotion Assistant, Sales Promotion Section, Domestic Marketing Department, Atlantic.

CX 154

Q. "Identify R. W. Reed."

A. In January 1951, R. W. Reed was Administrative Assistant, Office of the Vice-President and General Manager of Marketing, Atlantic.

CX 171 A

Q. "Identify W. C. Hoffman."

A. In October 1951, W. C. Hoffman was Senior Clerk, TBA Section, Domestic Marketing Department, Atlantic.

CX 172 A

Q. "Identify W. C. Hoffman."

A. In October 1951, W. C. Hoffman was Senior Clerk, TBA Section, Domestic Marketing Department, Atlantic.

CX 173

Q. "Identify W. C. Hoffman."

A. In July 1951, W. C. Hoffman was Senior Clerk, TBA Section, Domestic Marketing Department, Atlantic.

CX 179 I

Q. "Identify W. C. Hoffman."

A. In October 1951, W. C. Hoffman was Senior Clerk, TBA Section, Domestic Marketing Department, Atlantic.

CX 181

Q. "Identify W. C. Hoffman."

A. In May 1952, W. C. Hoffman was TBA Marketing Coordinator, TBA Section, Domestic Marketing Department, Atlantic.

CX 183

Q. "Identify W. J. Butler."

A. In May 1952, W. J. Butler was TBA Sales Promotion Assistant, Sales Promotion Section, Domestic Marketing Department, Atlantic.

2257 Mr. Kelaher: Mr. Examiner, we have entered into another stipulation with counsel for respondent Atlantic whereby it is stipulated and agreed that supplemental data concerning the three market areas designated by counsel in support of the complaint, namely, Philadelphia-suburban district, Wilmington, Delaware district, and Baltimore, Maryland district, may be received in evidence, with notation of the fact that portions of this data apply only to Goodyear, and portions apply only to Firestone. Such data relate to the number of Atlantic dealers in each designated district covered by a form G-1209, broken down by Goodyear supply points with respect to the Philadelphia-suburban district, and the number of Atlantic dealers in Atlantic's Wilmington, Delaware and Baltimore, Maryland districts covered by form S-757, broken down by Firestone supply points, all data as of June 30, 1956.

(The stipulation follows:)

2258 Number of Atlantic dealers in Atlantic's Philadelphia-Suburban District who, as of June 30, 1956, were covered by a Form G-1209, broken down by Goodyear supply points:

## Atlantic Dealers Covered by Form G-1209

Lessee Contract  
Dealers\* Dealers\*

## Supply Point

Supply Point	Lessee Dealers*	Contract Dealers*
Goodyear Tire and Rubber Co., Philadelphia, Penn. (District Office).....	2	6
Harvey W. George, Philadelphia.....	45	49
F. C. Glenn, Philadelphia.....	52	42
Ellwood E. Kieser, Philadelphia.....	40	116
E. F. Miller, Philadelphia.....	39	19
Goodyear Tire and Rubber Co., Jenkintown, Penn. (Goodyear Store).....	2	4
Goodyear Tire and Rubber Co., Norristown, Pennsylvania (Goodyear Store).....	8	1

\* Includes 11 lessee dealers and 5 contract dealers classified by Goodyear as associate dealers, who had two alternate supply points, and 3 contract dealers who, having chosen to be both a Goodyear Dealer and a Goodyear Associate Dealer, dealt with the Goodyear District Office in the former capacity and with a different supply point in the latter capacity.

Does not include 61 customers of Edward Parris and 54 customers of Frank Hagan, both of whom are Atlantic supplying dealers.

2261 Mr. Kelaher: I offer for identification Exhibit 389-A and B, a document obtained from the Goodyear files on September 15, 1949 entitled "Products Eligible Under Shell Sales Commission Plan."

(The document referred to was marked Commission Exhibit 389-A and B for identification.)

Mr. Kelaher: We offer Commission Exhibit 389-A and B into evidence.

Mr. Ballard: Atlantic objects to this document on the ground it relates to the sales commission plan between Goodyear and Shell.

Mr. Mason: Goodyear objects to the document, preserving its original objection that evidence with respect to sales

commission plans between Goodyear and other oil companies should not be received in this proceeding; and also it has an objection which relates to the recent motion brought before your Honor that the issues with respect to Goodyear and Shell should be excluded from this proceeding because the same issues are involved in a parallel proceeding in which your Honor is the Hearing Examiner.

Hearing Examiner Kolb: The objections will be overruled. The document will be received in evidence as Commission Exhibit 389-A and B, subject to a motion to strike by Atlantic.

(The document heretofore marked COMMISSION EXHIBIT 389-A and B for identification was received in evidence.)

2262 Mr. Kelaher: The "parallel proceeding" to which you refer is Docket 6487.

Mr. Kelaher: For identification as Commission Exhibit 390-A through F, a document obtained from the files of Goodyear Tire and Rubber Company on September 15, 1949, entitled "Oil Company Distribution and Its Importance."

(The document referred to was marked Commission Exhibit 390-A through F for identification.)

Mr. Kelaher: I now offer Commission/Exhibit 390-A through F in evidence.

Mr. Mason: Goodyear objects to the introduction of this document in evidence on the ground that it relates to Goodyear's relations to oil companies generally. It antedates the existence of any sales commission plan between Goodyear and Atlantic, and so is irrelevant to this proceeding.

Mr. Ballard: Atlantic objects for the same reason, and for the additional reason that there is no showing that this document was communicated to Atlantic. It is an internal



Goodyear document, and Atlantic is not bound by it and has no notice of it.

(Discussion off the record.)

Hearing Examiner Kolb: Objection sustained.

Mr. Kelaher: With reference to 390-A through F, I would like to re-offer it after certain other documents are admitted into evidence. I would like to reserve the 2263 right to re-offer it.

Hearing Examiner Kolb: You can always re-offer it.

Mr. Kelaher: For identification as Commission Exhibit 391-A through C, a document entitled "Shell Oil Company, Sales Commission," pages 1, 1-A, and 2, dated 10/21/55.

(The document referred to was marked Commission Exhibit 391-A through C for identification.)

Mr. Kelaher: We now offer Commission Exhibit 391-A through C in evidence.

Mr. Mason: Goodyear objects on the ground this relates to Shell Oil Company and therefore should not be in this proceeding both on the notion that evidence as to all oil companies other than Atlantic should be excluded, and also for the special reason set forth in our motion that the issues as to Shell and Goodyear should be excluded from this proceeding as being also involved in another proceeding where the same Examiner presides.

Mr. Ballard: Atlantic makes the same objection.

Hearing Examiner Kolb: The objections will be overruled. The document will be received in evidence as Commission Exhibit 391-A through C, subject to a motion to strike by Atlantic.

(The document heretofore marked COMMISSION EXHIBIT 391-A through C for identification was received in evidence.)

2264 Mr. Kelaher: For identification as Commission Exhibit 392-A and B, a letter dated June 3, 1948 from

R. C. Mueller, Division Sales Manager (Shell) to Mr. E. C. Flynn, District Manager, Goodyear Tire and Rubber Company, Peoria, Illinois, re "Hanselman Tire and Battery Company, Springfield, Illinois."

(The document referred to was marked Commission Exhibit 392-A and B for identification.)

Mr. Kelaher: We offer the document in evidence.

Mr. Mason: We have the same objection to this document as to the last exhibit admitted in evidence. Also, the objection that it is quite obviously ancient history.

Mr. Ballard: Atlantic has the same objection.

Hearing Examiner Kolb: The objections will be overruled, subject to a motion to strike by Atlantic.

(The document heretofore marked COMMISSION EXHIBIT 392-A and B for identification was received in evidence.)

Mr. Kelaher: For identification as Commission Exhibit 393, an intra-company memo dated 7/8/48, from S. A. Gaylord, Manager, Petroleum Sales Department, Goodyear, to E. C. Flinn, District Manager, Peoria, Illinois, subject: "Shell—re Hanselman Tire and Battery Company, Springfield, Illinois."

(The document referred to was marked Commission Exhibit 393 for identification.)

2265 Mr. Kelaher: We now offer Commission Exhibit 393 into evidence.

Mr. Mason: Same objection as to the last admitted exhibit.

Mr. Ballard: Same objection on the part of Atlantic.

Hearing Examiner Kolb: The objections will be overruled. The document will be received in evidence as Commission Exhibit 393, subject to a motion to strike by Atlantic.

(The document heretofore marked COMMISSION EXHIBIT 393 for identification was received in evidence.)

Mr. Kelaher: Commission Exhibit 393 is an intra-Good-year document.

For identification as Commission Exhibit 394-A through C, "Goodyear (W) district instructions 1086A, Akron 16, Ohio, dated October 19, 1948, originated by A. L. Rhoads, wholesale field operating department, subject: Shell Oil Company, San Francisco/Sales Commission Plan," to managers districts Western Division, Division Operating Manager, Western Division.

(The document referred to was marked Commission Exhibit 394-A through C for identification.)

Mr. Kelaher: We now offer the document in evidence.

Mr. Mason: Goodyear has the same objection as that to the last admitted exhibit.

2266 Mr. Ballard: Atlantic has the same objection and I would like to note for the record that Atlantic does not market in San Francisco.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 394-A through C, subject to a motion to strike by Atlantic.

(The document heretofore marked COMMISSION EXHIBIT 394-A through C for identification was received in evidence.)

Mr. Kelaher: For identification as Commission Exhibit 395-A and B, a letter dated December 19, 1951, from Butler Doolittle, Goodyear District Manager (Baltimore, Maryland) to C. H. Mead, Jr., Shell Oil Company, Inc., 909 East 22nd Street, Baltimore 18, Maryland.

(The document referred to was marked 395-A and B for identification.)

Mr. Kelaher: We now offer Commission Exhibit 395-A and B in evidence.

Mr. Mason: Goodyear has the same objection as that to the last admitted exhibit.

Mr. Ballard: Atlantic also.

Hearing Examiner Kolb: The objections will be overruled. The document will be received in evidence as Commission Exhibit 395-A and B, subject to a motion to strike by Atlantic.

(The document heretofore marked COMMISSION EXHIBIT 395-A and B for identification was received in evidence.)

2267 Mr. Kelaher: For identification as Commission Exhibit 396-A through H, letter dated October 9, 1950, from R. E. Sewell, Goodyear Petroleum Sales Representative (Northeast Division, 292 Madison Avenue, New York 17, New York) to Mr. O. E. Scholz, Retail Department, Shell Oil Company, 50 West 50th Street, New York, New York, with attached sheet of "Complete instructions with reference to our program with your company."

(The document referred to was marked Commission Exhibit 396-A through H for identification.)

Mr. Kelaher: We now offer Commission Exhibit 396-A through H into evidence.

Mr. Mason: Goodyear has the same objection to that as to the last admitted exhibit.

Mr. Ballard: Atlantic, also.

Hearing Examiner Kolb: The objections are overruled. The document will be received in evidence as Commission Exhibit 396-A to H, subject to a motion to strike by Atlantic.

(The document heretofore marked COMMISSION EXHIBIT 396-A to H for identification was received in evidence.)

Mr. Kelaher: For identification as Commission Exhibit 397-A and B, a letter dated January 30, 1953, from J. W. Basista, Petroleum Sales Department, Goodyear, to Mr.

George L. Switzer, Shell Oil Company, 50 West 50th Street, New York, New York.

(The document referred to was marked Commission Exhibit 397-A and B for identification.)

Mr. Kelaher: We now offer the document in evidence.

Mr. Mason: Goodyear has the same objection as that to the last admitted exhibit.

Mr. Ballard: Atlantic, also.

Hearing Examiner Kolb: The objections will be overruled. The document will be received, subject to a motion to strike by Atlantic.

(The document heretofore marked COMMISSION EXHIBIT 397-A and B for identification was received in evidence.)

Mr. Kelaher: For identification as Commission Exhibit 398-A and D, a letter dated August 24, 1948 from Manager, Petroleum Sales, Western Division (Goodyear) to Mr. D. C. Gibson, Shell Oil Company, Inc., 100 Bush Street, San Francisco 6, California, subject: "Sales Commission Plan."

(The document referred to was marked Commission Exhibit 398-A to D for identification.)

Mr. Kelaher: We offer the document in evidence.

Mr. Mason: Goodyear has the same objection as that to the last admitted exhibit.

Mr. Ballard: Atlantic, also.

Hearing Examiner Kolb: The objections will be overruled.

The document will be received in evidence as Commission Exhibit 398-A to D, subject to a motion to strike by Atlantic.

(The document heretofore marked COMMISSION EXHIBIT 398-A to D for identification was received in evidence.)

2270 Mr. Kelaher: For identification as Commission's Exhibit 68-C, a letter dated December 21, 1955, from John R. Sherwood, president, Sherwood Brothers, Inc., to Mr. S. A. Gaylord, requesting termination as of December 31, 1955, of sales commission plan agreement dated

March 1, 1944, with acceptance by Good year officials shown thereon.

(Whereupon, the document referred to was marked Commission's Exhibit 68-C for identification.)

Mr. Kelaher: We offer Commission's Exhibit 68-C into evidence.

Mr. Ballard: Atlantic objects on the ground that this relates to an oil company other than Atlantic.

Mr. Mason: Goodyear does not object to the introduction of this document in evidence because it relates to a contention which has heretofore been set out in an oral motion, that there was no sales commission plan in effect between Sherwood and Goodyear at the time that this proceeding was initiated, so that evidence as to Sherwood has been improperly received in this proceeding and I believe that in the past your Honor has accepted the Sherwood Brothers evidence, subject to a motion to strike by Goodyear.

Hearing Examiner Kolb: Not as to Sherwood, did I?

Mr. Mason: I believe your Honor did. This contention was raised by an oral motion by Mr. Correa in the middle of our proceedings in Baltimore, and he stated his grounds, that the Sherwood Brothers agreement had in fact been cancelled, was not in existence at the time this proceeding was initiated. And as a consequence your Honor did accept that evidence, subject to a motion to strike. It is a motion which we intend to bring as soon as the Commission has completed its case with respect to this.

Hearing Examiner Kolb: Isn't it Sherwood had some connection with Atlantic?

Mr. Ballard: Not Atlantic.

Mr. Kelaher: Sherwood was a hundred-percent-owned subsidiary of Sinclair.

Hearing Examiner Kolb: I know the witnesses called the Sherwood stations the Sinclair stations.



Mr. Mason: There is considerable confusion in the record which has arisen from the fact that there were two quite different sales-commission plans. One between Sherwood and Goodyear, which expired as of December 31, 1955, as indicated in this letter, which sales-commission plan covered TBA, whereas there was a sales-commission plan in existence during the same period and later, with Sinclair, covering only the "A".

For the purpose of ultimately eliminating this confusion and evidencing that the evidence as to Sherwood is not pertinent to this proceeding, we asked your Honor to receive it, subject to a motion to strike, and I believe 2272 your Honor has so ruled in the prior proceeding.

Hearing Examiner Kolb: I don't recall receiving Sherwood subject to a motion to strike. I have here—the contract itself was received subject to a motion to strike by Atlantic only.

Mr. Kelaher: That is correct. You are referring to another matter, I think. You are referring to testimony.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Commission's Exhibit 68-C will be received in evidence, subject to a motion to strike by Atlantic.

(Whereupon, the document referred to, heretofore marked COMMISSION'S EXHIBIT 68-C for identification, was received in evidence.)

Mr. Kelaher: For identification as Commission's Exhibit 399-A through C, a tabulation entitled "Shell Oil Company, Schedule A, Part 2-3-4, three pages," listing by Shell divisions and districts the number of service stations by type or class and jobbers as of July 1, 1956.

(Whereupon, the document referred to was marked Commission's Exhibit 399-A through C for identification.)

Mr. Kelaher: We offer the document in evidence.

Mr. Mason: Goodyear objects on the ground this 2273 relates to a non-respondent oil company and an issue which is being tried in another case in which your Honor is presiding.

Mr. Ballard: Atlantic objects on the same grounds, and I would like to point out to your Honor that this document shows on its face that it has already been received in evidence in the other matter, Docket Number 6487.

Hearing Examiner Kolb: The objections will be overruled.

The document will be received in evidence, subject to a motion to strike by Atlantic.

(Whereupon, the document referred to, heretofore marked COMMISSION'S EXHIBIT 399-A through C for identification, was received in evidence.)

Mr. Kelaher: For identification as Commission's Exhibit 400-A through S, inclusive, certain statistical data submitted by counsel for respondent Goodyear in response to request of counsel supporting the complaint, relating to Goodyear sales-commission plans with respondent Atlantic and other oil companies.

(Whereupon, the document referred to was marked Commission's Exhibit 400-A through S for identification.)

Mr. Kelaher: We now offer Commission's Exhibit 400-A through S into evidence.

Mr. Mason: Goodyear has no objection to the introduction of this in evidence, except that the statistical 2274 material referred to is regarded by Goodyear as confidential trade information, and therefore Goodyear requests that this information be given confidential treatment in accordance with the procedures available in Commission proceedings.

I might add, so as to make it possible for Atlantic to take a position with respect to the material, we have shown

it to Atlantic's counsel, who have also undertaken to treat it confidentially.

Mr. Ballard: Atlantic objects to so much of this document as relates to oil companies that are not respondents other than Atlantic.

Hearing Examiner Kolb: As long as the document covers both, I will overrule the objection.

Mr. Ballard: Your Honor, you have, I believe, consistently permitted Goodyear to register its objection to Atlantic statistics covering Firestone.

Hearing Examiner Kolb: No, I think where they were together in a document, where it applied to both, I have overruled the objection entirely.

Mr. Ballard: May I point out to your Honor—and I don't mean to press this point unduly—I would think it was squarely within the Commission's order in this proceeding for you to preserve our motion to strike, for instance, the information with respect to Anderson Prichard

Oil Company and Ashland Oil Refining and a great 2275 many other companies that haven't even been mentioned in this proceeding.

Hearing Examiner Kolb: The objection will be overruled. The document will be received in evidence as Commission's Exhibit 400-A to S, inclusive. This exhibit will be placed in the Commission's confidential files for use by the Commission's attorneys, the examiner, the attorneys for the respondents, and by the Commission in the event of later appeal.

(Whereupon, the document referred to, heretofore marked COMMISSION'S EXHIBIT 400-A through S for identification, was received in evidence and ordered sealed.)

Mr. Mason: May it be understood that this document is received without prejudice to the pending motion to strike the issue as to the Goodyear-Shell Oil Company?

Hearing Examiner Kolb: Yes.

Mr. Kelaher: Your Honor, my understanding originally is that eventually there may be no objection to removing the confidentiality treatment of this material. Is that correct?

Mr. Mason: That is correct. And I would suppose that we could confer informally on that matter at some later time. I anticipate that there will occur times when briefs are to be written, or opinions written, where members of the Commission Staff or the Examiner may wish to refer to this information. In that event, I am sure we will 2276 waive our objection at that time.

Mr. Kelaher: That would be agreeable to counsel supporting the complaint, Mr. Examiner.

Mr. Mason: Counsel supporting the complaint has informally requested of Goodyear information as to the existence and dates of inception of certain sales-commission arrangements with oil companies other than Atlantic.

We have investigated, to the extent possible, in the period of time we had, what the facts were. Subject to the registration of our objection as to evidence with respect to other oil companies, Goodyear is prepared to stipulate that if appropriate officers of Goodyear were called to testify, that they would testify, as to the Shell Oil Company, that sometime about 1941, Goodyear had a sales-commission plan with Shell in some but not all of Shell's divisions; that there was no sales-commission plan in the Indianapolis and Cleveland divisions until April 1, 1946; also, that in the Western part of the country Shell had a purchase and resale plan until about January 1, 1949; also, that these arrangements with Shell Oil Company were not set out in a formal written agreement until January 1, 1950.

Goodyear is similarly prepared to stipulate that an appropriate Goodyear officer would testify as to the Shell-American Oil Company that Goodyear entered into a sales-

commission plan with Shell-American without a formal agreement about August 21, 1950.

As to the Ashland Oil Company, Goodyear is prepared to stipulate that an appropriate officer of Goodyear would testify that a sales-commission plan was started about July 21, 1950, and that again there was no formal written contract.

As to Valvoline, Goodyear is similarly prepared to testify through appropriate officials that a sales-commission arrangement was entered into about September 21, 1950, and that Goodyear believes this company to be a subsidiary of Ashland. Again there was no formal written agreement.

As to Richfield Oil and Rio Grande, Goodyear is again prepared to stipulate that if an appropriate officer of Goodyear were called, that he would testify that he believes but is not sure that a sales-commission arrangement was entered into around the mid-1940's, and that this was not the subject of a formal written agreement. Also, that this sales-commission plan covered car and home merchandise only.

As to Sherwood Brothers, Inc., Goodyear is prepared to stipulate that if an appropriate officer were called, he would testify that the unsigned contract dated July 14, 1937, identified as Commission's Exhibit 67-A and B, was never executed, and that the sales-commission arrangement with Sherwood Brothers was initiated by a contract identified in this record as Commission's Exhibit 68-A and B, dated March 1, 1944, although there is some possibility that there may have been an oral arrangement preceding the entry of the execution of this contract.

As to the marketing areas of oil companies, Goodyear is prepared to stipulate that if an appropriate officer were called, he would testify as to Richfield Oil and Rio Grande

that to the best of his information Richfield Oil Company has its headquarters in Los Angeles; that Rio Grande was formerly a division operating in the Los Angeles area; and that Richfield Oil Company referred to is not believed to be a subsidiary of any other oil company with whom Goodyear has a sales-commission plan.

He would further testify that Richfield's marketing area includes the states of Idaho, Arizona, Nevada, Washington, Oregon, and California.

As to Midcontinental Petroleum Corporation, an appropriate officer of Goodyear would testify that this is now DX-Sunray Oil Company with whom Goodyear has a sales-commission contract identified in this record as Commission's Exhibit 73-D through G, and that Goodyear believes that DX-Sunray's marketing area includes Indiana, Illinois, Wisconsin, Kentucky, Tennessee, Mississippi, Minnesota, Iowa, Missouri, South Dakota, Nebraska, Kansas, Arkansas, Oklahoma, and Texas.

As to Shell-American Petroleum Company, an appropriate officer of Goodyear would testify that this company is now a part of Shell Oil Company and that Goodyear believes that it operated only in the Indianapolis area.

As to Quaker State, an appropriate officer of Goodyear would testify that that company markets in the states of Pennsylvania, West Virginia, and Ohio.

As to Valvoline, an appropriate officer of Goodyear would testify that that company is a part of Ashland, with headquarters in Freedom, Pennsylvania, and that Goodyear believes its marketing area includes eastern Ohio and western Pennsylvania.

As to Anderson Pritchard Oil Company, an appropriate officer of Goodyear would testify that this company's marketing area includes Illinois, Wisconsin, Minnesota,



Iowa, Missouri, North Dakota, South Dakota, Nebraska, Kansas, Arkansas, Oklahoma, and Texas.

As to Sinclair Refining Company, an appropriate officer of Goodyear would testify that this Company's marketing area includes approximately 37 states. It is believed that the company does not operate in New England or in the West Coast states.

As to subsidiaries of particular oil companies which are referred to in the statistical material contained in Commission's Exhibit 400-A through S, as to Ashland the subsidiaries are Kellog Petroleum Products Company, National Refining Company, Frontier Oil Refining Company, Valvoline Oil Company. As to Shell Oil, the subsidiary is Shell-American Oil Company. As to Sinclair, the subsidiary is Sherwood Brothers.

As indicated above, Goodyear is prepared, if agreeable to counsel supporting the complaint, to stipulate to the information above set forth.

Mr. Kelaher: Mr. Examiner, we are prepared to stipulate to the matters set forth by counsel for respondent Goodyear concerning the companies named.

Mr. Mason: So that the matter is now so stipulated between Goodyear and counsel supporting the complaint.

Mr. Ballard: Your Honor, I don't know what effect a stipulation of this kind between counsel has as evidence, but I assume that in as much as this stipulation relates entirely to oil companies other than Atlantic, that if my motion to strike testimony relating to such oil companies is granted, that this stipulation will be treated accordingly as far as Atlantic is concerned. I don't know whether it is a stipulation with me or not.

Hearing Examiner Kolb: We will receive the stipulation, subject to a motion to strike by Atlantic as applying to other oil companies.

Mr. Ballard: That is all right with me.

Mr. Kelaher: At this time I would like to reoffer Commission's Exhibit 390-A through F for the following reasons: Certain documents which have just been entered into evidence, and certain stipulations, show clearly that the Shell Oil Company plan with respect to its West Coast Division became operative on or about January 1, 1949.

Reference is made in this connection to Commission's Exhibit 394-A, which is a document referring to Shell Oil Company, San Francisco sales-commission plan, issued by Goodyear, stating "Effective January 1, 1949, Shell Oil Company, Inc., San Francisco, will be sold on a sales-commission basis superseding the present resale program."

Referring back to 390-B, under 2, merchandising-commission plan: "As indicated earlier in this section, two oil companies operate exclusively on a merchandising-commission plan—Shell Oil Company of New York and California and Sherwood Brothers, Baltimore."

I might add further that in paragraphs above it is stated: "The petroleum companies participating in this plan in distributing tires, tubes, and batteries are Shell Oil Company, New York; Shell Oil Company, California; Sherwood Brothers, Baltimore."

I submit to your Honor that in view of the fact that Goodyear's plan with Shell Oil Company of California did not go into effect until January 1, 1949, that the document Commission's Exhibit 390-A through F, which was obtained from the files of Goodyear on September 15, 1949, must have been dated sometime between January 1, 1949, and September 15, 1949. We ask reconsideration of the document.

Mr. Mason: The basic problem with respect to this document is that its authorship, its date of origin, its total accuracy, is not clear. To the extent that information contained in this document agrees with information

that appears in documents already introduced in evidence, this one is unnecessary. To the extent it differs or elaborates, it is subject to the very same fault it had before, that we don't really know how sound a piece of information it is. And as a consequence, we object to the reoffer on the same grounds mentioned earlier.

Mr. Kelaher: Does counsel now concede it must have been dated sometime between January 1, 1949, and September 15, 1949?

Mr. Mason: I can't concede that.

Mr. Kelaher: I note no objection on that ground.

Mr. Mason: It may agree with what is said in another document; doesn't mean the author was mistaken or not mistaken.

Hearing Examiner Kolb: Mr. Kelaher, you are assuming that the only objection to this is the absence of date. There is also the additional objection that we don't know what it is, what it was used for, who it was written by, or anything else. It just happens to be a document in the files, and if it was some notes on which a man wanted 2283 to write an article or what, we don't know.

Mr. Kelaher: We feel this is an important document because it shows the method of Goodyear in entering into the sales-commission plans as set forth on the first page. In addition to that, we asked counsel for respondent Goodyear sometime ago to obtain some information concerning this document. And up to this time we have learned nothing about it, although it was handed to an attorney-examiner of the Federal Trade Commission by Mr. Baker, who was at that time in the legal department of the Goodyear Tire and Rubber Company in Akron, Ohio.

I think the burden falls on respondent to explain, in view of the fact that we have asked for an explanation for many months, as they will attest, I am sure.

Mr. Mason: We have undertaken to find out what we could find out about it, and all we could find out is that it was a document turned over, and that it was a document from our files, and that is all we know about it, and that is all we can agree to. Unfortunately—

Mr. Kelaher: We are not concerned—Page 1 and Page 2 are the parts we are concerned with, and a part of Page 3. We know we have all this other information. That shows how the plan operates, and there is other evidence in the record concerning the operation of the plan.

Mr. Mason: We do not know who authored this 2284 document or to what end, or if the person who authored it actually was in possession of the knowledge that it purports to set out. There are other ways of going after this than this particular document.

Mr. Kelaher: It is quite apparent that whoever the author was he was very familiar with the sales-commission plan because he goes into great detail about the operation of the plan. So it presumably was authored by someone in a policy-making position.

Mr. Mason: It may have been a preliminary draft. That I just don't know. Or it may have been discarded.

Mr. Kelaher: It was obtained from the regular files of the company, so I don't think that argument—

Mr. Mason: It was unquestionably in the files of the company and it was unquestionably turned over to your people. We don't deny that. We just don't know what it is, or when it was written.

Mr. Kelaher: We know approximately when it was written, based on your—

Mr. Mason: I deduce when it was written. . . .  
2285 Hearing Examiner Kolb: Mr. Kelaher, in order to hold the Goodyear Company, you are going to have to show the nature of this document, how it was used, how it was prepared, and everything else. This is simply

a document which you have found in the files, which makes certain statements.

Mr. Kelaher: That is right.

Hearing Examiner Kolb: That is all. And whether or not the company acted upon them, whether they were submitted to the company for the purpose of being acted upon, whether the president or somebody, the sales manager, prepared this document for the purpose of directing sales or whether it was some suggestion made by an outsider or somebody else, there is nothing in here to show what it is. I can't accept it on that basis.

Mr. Kelaher: It states what it is, "Oil company distribution and its importance."

Hearing Examiner Kolb: What does that mean? Is that by the salesman, by the sales manager, production manager, or somebody outside making a suggestion?

Mr. Kelaher: I think it is quite obvious that it was a policy-making official because since that time, since 1949, there has been a constant expansion of the sales through oil companies.

Hearing Examiner Kolb: I don't think we can guess that or infer that from a document which we know 2286 nothing about. That is my idea on the objectionable nature of the document. I will sustain the objection.

Mr. Kelaher: Do I understand your ruling to be that this could be offered to show that it did come from the files of Goodyear to that extent? Or are you excluding it completely?

Hearing Examiner Kolb: If you offer it solely to show it came from the files of Goodyear, and if it is not offered for the proof of anything contained therein, it means nothing.

Mr. Kelaher: May we have a short recess? Then we will move to Sinclair and that will be the last business of the day. We have quite a number of documents.

Hearing Examiner Kolb: All right.

(A short recess was taken.)

Hearing Examiner Kolb: On the record.

Mr. Mason: If your Honor please, I understand that counsel in support of the complaint now plans to turn to the subject of Sherwood and its sales commission arrangements with Goodyear. In that connection I should like to raise the fact that this matter has been the subject of colloquy between my partner, Mr. Correa, and your Honor at transcript 1661 in the record, and that at that time Mr. Correa indicated that it was our intention at some appropriate later date to move to strike testimony and evidence with respect to Sherwood, on the grounds that the 2287 Sherwood sales commission arrangement was terminated prior to the filing of the complaint and the amended complaint in this proceeding.

I would therefore request that your Honor, in receiving any evidence as to Sherwood in this proceeding, would do so without prejudice to our right to bring this motion on at an appropriate time.

Hearing Examiner Kolb: The testimony with reference to Sherwood will be received, without prejudice to the right of Goodyear to file a motion at a later date if it so desires.

Mr. Ballard: May I ask your Honor to add that it will be received subject to a motion to strike by Atlantic, as well?

Hearing Examiner Kolb: We will have to wait until the end because I don't know what it is.

Mr. Kelaher: I would like to have the following exhibits marked for identification:

Commission Exhibit 401: Distribution List for Sales Department Correspondence, No. 200-10/52, including the number of service stations serviced by Branch Managers, Commission Bailees, and Distributors listed thereon.



Commission Exhibit 402-A through N: Bulletin No. LL & CE 52-15A, December 31, 1952; and summary of L. O. Stations—Baltimore City, including Metropolitan Area.

Commission Exhibit 403-A to S: List of service 2288 station dealers in metropolitan Baltimore, Maryland, area, classified by L.O., D.D., and U.D. stations, marketing territories, and sales representatives, as of March 1953.

Commission Exhibit 404: Bailment Agreement Form SB-2833 500 9-51.

Commission Exhibit 405-A and B: Equipment Rental Agreement Form SB 118-3M-11-50.

Commission Exhibit 406-A and B: Dealer Permit Form S.B. 2072-A 500 10-51.

Commission Exhibit 407-A to D: Service Station Lease SB 1601-A 1M 8-51.

Commission Exhibit 408: Amendment of Service station Lease M-256 6-52.

Commission Exhibit 409: Termination of Service Station Lease M-142 -200 -2/53.

Commission Exhibit 410-A and B: Dealer Sales Agreement Form S.B. 106 3M 7-50.

Commission Exhibit 411: Letter dated March 10, 1953, from Fred D. McCauley to Mr. Henry L. Lipsky, Federal Trade Commission.

Commission 412-A to H: Documents entitled "Sherwood Bros., Inc., Baltimore, Md., Sales Commission," as follows:

Page 1 1-1-50

Page 1-A 1-1-50

Page 2 1-1-50

Page 2-A 1-1-50

Page 3 1-1-50

Page 3 12-10-51

Page 1 4-18-52

Page 1-A 4-18-52

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Commission Exhibit 413: Form SB-2081-CS-(2500 6.46), relating to credit identification cards.

Commission Exhibit 414: Interoffice memorandum dated March 28, 1944, from Fred D. McCauley to Mr. DeHoff, carbon copy to Mr. John R. Sherwood, subject: Batteries.

Commission Exhibit 415-A and B. Interoffice memorandum dated March 29, 1944, from Fred D. McCauley to Mr. DeHoff, carbon copy to Mr. John R. Sherwood, subject: Goodyear Tire & Rubber Co.

Commission Exhibit 416: Interoffice memorandum dated March 29, 1944, from Fred D. McCauley to Mr. DeHoff, carbon copy to Mr. John R. Sherwood, subject: Goodyear.

Commission Exhibit 417: Interoffice memorandum dated March 31, 1944, from Fred D. McCauley to Mr. G. Roland DeHoff, carbon copy to Mr. John R. Sherwood, subject: Goodyear Commissions.

Commission Exhibit 418-A and B: Letter dated July 13, 1944, from Fred D. McCauley (Sherwood) to Mr. Ted Hardy, Manager, Battery Department, Goodyear Tire & Rubber Company, Akron, Ohio, carbon copy to Messrs. 2290 Doolittle (Goodyear), John R. Sherwood, DeHoff, Cottman, Sellers.

Commission Exhibit 419: Letter dated July 27, 1944, from JRS, Vice President (Sherwood) to Mr. Butler Doolittle (Goodyear-Baltimore); carbon copy to Messrs. S. A. Gaylord (Goodyear) and Fred McCauley (Sherwood).

Commission Exhibit 420-A and B: Letter dated July 29, 1944, from Fred D. McCauley (Sherwood) to Mr. John B. Mann, Goodyear Tire & Rubber Company (Baltimore), carbon copy to Mr. Butler Doolittle (Goodyear-Baltimore).

Commission Exhibit 421: Letter dated August 19, 1944, from F. D. McCauley (Sherwood) to Mr. Butler Doolittle, District Manager (Goodyear-Baltimore), carbon copy to Messrs. DeHoff, John R. Sherwood.

Commission Exhibit 422-A and B: Interoffice memorandum dated November 2, 1944, from John R. Sherwood to Mr. Fred McCauley, carbon copy to Mr. DeHoff.

Commission Exhibit 423-A to C: Letter dated May 29, 1945, from Butler Doolittle, District Manager (Goodyear-Baltimore) to Mr. Fred McCauley (Sherwood), carbon copy to L. H. Shepherd, Mgr. S. E. Div., Atlanta, Georgia, and S. A. Gaylord, Manager, Petroleum Sales, Akron, Ohio.

Commission Exhibit 424: Letter dated June 6, 1945, from Fred D. McCauley (Sherwood) to Mr. John D. Mann, Special Petroleum Sales Representative (Goodyear-Baltimore), carbon copy to Messrs. John R. Sherwood, Dehoff, Landon.

2291 Commission Exhibit 425-A and B: Letter dated December 31, 1945, from Fred D. McCauley (Sherwood) to Mr. John D. Mann, Special Petroleum Sales Representative (Goodyear-Baltimore), carbon copy to Mr. Joseph Keenan, Assistant District Manager, Goodyear Tire & Rubber Company, and Messrs. John R. Sherwood, G. R. DeHoff, R. K. Johnson (Sherwood).

\*Commission Exhibit 426: Letter dated January 15, 1946, from Fred D. McCauley (Sherwood) to Mr. J. A. Lewin, Manager-Dealer Department (Goodyear-Akron).

Commission Exhibit 427: Letter dated January 23, 1946, from Fred D. McCauley (Sherwood) to Mr. John B. Mann, Special Petroleum Representative (Goodyear-Baltimore), carbon copy to Messrs. DeHoff, Landon, Clarke (Sherwood).

Commission Exhibit 428: Letter dated March 6, 1946, from Fred D. McCauley (Sherwood) to Mr. Paul Spahr, Manager, Goodyear Tire & Rubber Company Warehouse, 910 Brown Street, Philadelphia 23, Pennsylvania, carbon copy to Mr. DeHoff.

Commission Exhibit 429: Letter dated March 11, 1946, from A. W. Littleton, Field Representative, to Miller Chevrolet Sales, Ellicott City, Maryland.

Commission Exhibit 430-A and B: Interoffice memorandum dated August 6, 1946, from John R. Sherwood to Mr. Lawson, carbon copy to Messrs. Jurgens, DeHoff, McCauley, subject: TBA Commissions to Commission 2292 Agents on Goodyear Merchandise; attaching memorandum dated December 7, 1945, from John R. Sherwood to Mr. DeHoff, carbon copy to Mr. Jurgens.

Commission Exhibit 431: Unaddressed form letter dated July 30, 1946, from Sherwood Brothers Incorporated, Vice President, with the following in the lower lefthand corner:

“Accepted:

.....  
Agent”

Commission Exhibit 432: Letter dated August 20, 1946, from John R. Sherwood, Vice President (Sherwood) to Mr. H. G. Harper, Manager, Associated Merchandise (Goodyear-Akron), carbon copy to Mr. Fred McCauley.

Commission Exhibit 433: Letter dated June 3, 1947, from Fred D. McCauley (Sherwood) to Mr. John D. Mann (Goodyear-Baltimore).

Commission Exhibit 434-A and B: Interoffice memorandum dated July 17, 1947, from Fred D. McCauley to Mr. Howard Landon, carbon copy to Messrs. DeHoff, Van Horn, subject: John R. Brown, Cockeysville, Maryland.

Commission Exhibit 435: Interoffice memorandum dated February 19, 1948, from Fred D. McCauley to Mr. D. Lawson, carbon copy to Messrs. DeHoff, Landon, Lindsay, Weller, Van Horn, subject: Report of Goodyear TBA Commissions by Agency Territories, Total for Year 1947.

Commission Exhibit 436: Interoffice memorandum 2293 dated February 2, 1949, from Fred D. McCauley to Mr. B. Lawson, carbon copy to Messrs. DeHoff, Landon, Weller, Van Horn, subject: Report of Goodyear TBA Commissions by Agency Territories, Year 1948.

Commission Exhibit 437: Letter dated April 30, 1948, from H. W. Van Horn, Merchandising Department (Sherwood) to Jackson Manufacturing Company, 622 East 3rd Street, Kansas City 6, Missouri, with notations.

Commission Exhibit 438: Interoffice memorandum dated September 23, 1947, from Fred D. McCauley to Mr. John Sause, carbon copy to Mr. Weller.

Commission Exhibit 439: Form letter dated September 19, 1952, from G. R. DeHoff, Sales Manager, to All Betholine-Sinclair Dealers Authorized to Honor Credit Cards, with the name "Weller" and "cc All Sales Representatives and Others Concerned" noted thereon.

Commission Exhibit 440: Tabulation entitled C I C—Sales, 1952.

Commission Exhibit 441: Letter dated August 23, 1948, from Butler Doolittle, District Manager (Goodyear-Baltimore) to Mr. Fred D. McCauley (Sherwood).

Commission Exhibit 442: Letter dated September 21, 1948, from H. W. Van Horn, Merchandising Division (Sherwood) to Mr. Butler Doolittle (Goodyear-Baltimore), carbon copy to Messrs. McCauley (Sherwood), Mann 2294 (Goodyear), with notations thereon.

Commission Exhibit 443: Letter dated September 3, 1948, from H. W. Van Horn, Merchandising Department (Sherwood) to Mr. R. G. Crawford, Store Planning & Display Department (Goodyear-Akron), carbon copy to Messrs. DeHoff, McCauley, Clarke.

Commission Exhibit 444: Letter dated January 7, 1949, from H. W. Van Horn (Merchandising Division) to Mr. J. A. Nelson, Service & Equipment Department, Retail Stores Division (Goodyear-Akron), carbon copy to Messrs. McCauley, Hughes.

Commission Exhibit 445: Form letter dated August 9, 1949, from H. W. Van Horn, Merchandising Division (Sher-

wood) to all Betholine-Sinclair dealers, subject: A 1949 custom made plan to modernize your business.

Commission Exhibit 446: Interoffice memorandum dated June 23, 1950, from Fred D. McCauley to Mr. Van Horn, subject: Boss Anderson, Station #27, Keswick Road.

Commission Exhibit 447-A to E: Letter dated June 19, 1946, from Fred D. McCauley to Mrs. Mabel Harmon, General Manager (Goodyear-Baltimore), carbon copy to Messrs. John D. Mann (Goodyear), Van Horn (Sherwood), with attached "Complete, exact and up to the minute, list of Sherwood dealers located in the metropolitan area of Baltimore, who would like to have advertising serv-2295 ices as outlined, when the Goodyear identification truck reaches Baltimore."

Commission Exhibit 448: Goodyear Form A98101L (1946) entitled "Request for (Goodyear Tires) Identification Truck Service"; item 1 lists Brooks-Huff as dealer; dated 3-29-49.

Commission Exhibit 449: Interoffice memorandum dated May 12, 1947, from Roland DeHoff to "Doc" Allen, carbon copy to Mr. F. D. McCauley.

Commission Exhibit 450-A and B: Letter dated August 25, 1952, from H. W. Van Horn, Manager, TBA (Sherwood) to Mr. Butler Doolittle (Goodyear-Baltimore), carbon copy to Messrs. DeHoff, McCauley.

Commission Exhibit 451-A and B: Letter dated January 6, 1950, from Fred D. McCauley (Sherwood) to Mr. W. S. Martel, Manager, Automotive Jobber Sales Division (Goodyear-Akron), carbon copy to Mr. E. A. Robinson, 14 Parsons Street, Harrison, New York (Goodyear), Mr. John Mann (Goodyear-Baltimore), and Mr. C. R. DeHoff (Sherwood).

Commission Exhibit 452-A and B: Interoffice memorandum dated January 2, 1948, from Fred D. McCauley to Mr. John Leimbach, carbon copy to Messrs. Cottman,



Weller, Van Horn, subject: Developing Store at Charles Hudgins, North Avenue and Charles Street, Baltimore, Maryland.

Commission Exhibit 453: Letter dated February 23, 1948, from Fred D. McCauley (Sherwood) to Mr. 2296 Charles H. Hudgins, Betholine-Sinclair Service Station, Charles Street and North Avenue, Baltimore, Maryland, carbon copy to Messrs. Leimbach, Cottman, Weller.

Commission Exhibit 454-A and B: Letter dated February 29, 1948, from Fred D. McCauley (Sherwood) to Mr. Charles H. Hudgins, Betholine-Sinclair Service Station (Baltimore).

Commission Exhibit 455: Interoffice memorandum dated March 5, 1948, from S. W. Holsinger to "Mac", with notation "File Hardingham".

Commission Exhibit 456-A and B: Interoffice communication dated March 20, 1948, from L. J. Balling to Mr. F. D. McCauley, carbon copy to Mr. Harry Weller, subject: Wm. F. King #50, Broadway and Lombard Streets.

Commission Exhibit 457: Document entitled "Dealer TBA Survey", dated December 14, 1951, from Elmore Evans, Sales Representative, with dealer name "Fayette Filling Inc., Fayette and Highland Avenue."

Commission Exhibit 458: Letter dated April 25, 1952, from H. W. Van Horn, Manager, TBA (Sherwood) to Mr. D. A. Hilleary, Special Representative, Mechanical Goods Division, 2750 North Broad Street, Philadelphia 32, Pennsylvania (Goodyear).

Commission Exhibit 459: Interoffice memorandum dated June 3, 1952, from Harry J. Weller to Mr. Jurgens, 2297 carbon copy to Messrs. Hall, DeHoff, subject: J. Norman Hobbs #47, 4607 Edmonson Avenue.

Commission Exhibit 460: Tabulation entitled "Sherwood Brothers Inc. Purchases, Commission, Resale and

Own Consumption, December and January 1 to December 31, 1944''.

Commission Exhibit 461-A to C: Interoffice memorandum dated December 12, 1945, from Fred D. McCauley to Mr. John R. Sherwood, carbon copy to Messrs. DeHoff, Cottman, Johnson, attaching two tabulations showing "Sherwood Bros. Inc. Bonusable Volume & Commission Earned on Goodyear Products Sold to Dealers & Agents" for the years 1944 and 1945.

Commission Exhibit 462: Tabulation entitled "Sherwood Brothers Inc. Purchases, Commission, Resale and Own Consumption, December and January 1 to December 31, 1945''.

Commission Exhibit 463-A and B: Letter dated March 13, 1946, from John R. Sherwood, Vice President (Sherwood) to Mr. T. J. Beddingfield, Sinclair Refining Company, New York, New York, subject: Sherwood TBA Program, carbon copy to Mr. Fred McCauley.

Commission Exhibit 464: Tabulation entitled "Sherwood Brothers Incorporated Purchases, Commission, Resale and Owen Consumption, December and January 1 to December 31, 1946''.

Commission Exhibit 465-A and B: Letter dated January 7, 1947, from John R. Sherwood, Vice President 2298 (Sherwood) to Mr. R. S. Wilson, Vice President (Goodyear-Akron), carbon copy to Mr. Fred McCauley.

Commission Exhibit 466: Tabulation entitled "Sherwood Brothers Inc. Purchases, Commission, Resale and Own Consumption, December and January 1 through December 31, 1947''.

Commission Exhibit 467: Interoffice memorandum dated October 16, 1947, from Fred D. McCauley to Mr. DeHoff, carbon copy to Messrs. Weller, Cottman, Van Horn, Landon.

Commission Exhibit 468: Tabulation dated January 26, 1951, from Fred D. McCauley to Mr. G. R. DeHoff, carbon copy to Messrs. J. R. Sherwood, Cottman, Weller, Landon, Van Horn, subject: TBA Progress Report for December 1950.

Commission Exhibit 469: Tabulation entitled "Total TBA Volume Sold to Betholine-Sinclair Dealers on Which We Received Commission" for the years 1951 and 1952, by months.

Commission Exhibit 470: Tabulation issued 2-13-53 by Statistics Division, Sales Accounting Department (Goodyear), entitled "Sherwood Brothers Inc. Sales by Goodyear Districts, January 1, 1952 through December 31, 1952".

Commission Exhibit 471: Map of Maryland, showing marketing area of Sherwood.

With respect to Commission Exhibit 401 for identification, it is stated thereon in ink: "Number of dealers in each terr."

The figures written on the document opposite the 2299 names of branch managers and suppliers represent the number of dealers in each of such branch manager or supplier's territory. Further, the persons named as suppliers were stated to be commission bailees, instead of suppliers at that time. They are now known as marketers.

With respect to Commission Exhibit 403-A through S, which is undated, this document should be dated "As of March 1953."

With respect to Commission Exhibits 430-A and B, and 431, in response to request for further information concerning the TBA commissions to commission agents on Goodyear merchandise referred to in such documents, it is understood that such commission plan was never put into effect by Sherwood Brothers, Inc.

Is that right?

Mr. Mason: Right.

Mr. Kelaher: At this time, your Honor, we offer Commission Exhibits 401 through 471, with subletters, in evidence.

Mr. Ballard: Your Honor, I understand—and I am sure Mr. Kelaher will correct me if I am wrong—that these documents relate entirely and in their entirety to Sinclair, and for that reason I object to them on the ground that it is a non-respondent oil company.

Hearing Examiner Kolb: Do you want to put in 2300 Sherwood, also?

Mr. Ballard: Your Honor, I can't understand the difference between them, Sinclair-Sherwood. They are both non-respondents as far as I am concerned.

Mr. Mason: If Your Honor please, Goodyear objects to all of these documents, first on the general ground that they relate entirely to an arrangement between Goodyear to the extent they involve Goodyear, and a non-respondent oil company.

Second, because the non-respondent oil company to which they relate is Sherwood Brothers, Inc., and there was at the time of the complaint no contract in effect between Goodyear and Sherwood, so that this deals with issues not within the literal scope of the complaint.

Third, as to those documents which show on their face that they are intra-Sherwood documents which did not come to the attention of Goodyear, that they are not binding against Goodyear because there is no conspiracy charge here and certainly no conspiracy shown that would make admissions of Sherwood binding upon Goodyear.

Hearing Examiner Kolb: The objections will be overruled. The documents will be received in evidence as Commission Exhibits 401 through 471, inclusive, with the subletters thereof, subject to a motion to strike by Atlantic,

and without prejudice to the right of Goodyear to 2301 make a motion at a later date to strike in connection with the previous statement made upon the record.

(The documents heretofore marked for identification were received in evidence as COMMISSION EXHIBITS 401, 402-A to N, 403-A to S, 404, 405-A and B, 406-A and B, 407-A to D, 408, 409, 410-A and B, 411, 412-A to H, 413, 414, 415-A and B, 416, 417, 418-A and B, 419, 420-A and B, 421, 422-A and B, 423-A to C, 424, 425-A and B, 426, 427, 428, 429, 430-A and B, 431, 432, 433, 434-A and B, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447-A to E, 448, 449, 450-A and B, 451-A and B, 452-A and B, 453, 454-A and B, 455, 456-A and B, 457, 458, 459, 460, 461-A to C, 462, 463-A and B, 464, 465-A and B, 466, 467, 468, 469, 470, and 471.)

Mr. Kelaher: I offer the following exhibits for identification:

As Commission Exhibit 472, Sinclair Marketer Agreement, Form 35 10 M 9-54..

As Commission Exhibit 473, Sinclair Rental Agreement, Form 1800 25 M 6-57.

As Commission Exhibit 474, Form 1601 B 25M 10-57.

As Commission Exhibit 475, Sinclair Refining Company, Refined Oil Sales Agreement—Dealer, Form 731-D 20-M 10-57.

As Commission Exhibit 476, Sinclair Refining Company, Refiners of Petroleum, Form 2081 25M 5-57, relating 2302 to credit identification cards.

As Commission Exhibit 477, enlarged photostatic copy of Sherwood Brothers, Inc. credit identification card, expiring December 31, 1954.

As Commission Exhibit 478, an enlarged photostatic copy of Sinclair Refining Company credit identification card, expiring December 31, 1957.

As Commission Exhibit 479, a certified agreement of

merger dated December 7, 1955, made by and between Sinclair Refining Company and Sherwood Brothers, Incorporated, with certificate attached.

(The documents referred to were marked Commission Exhibits for identification 472, 473, 474, 475, 476, 477, 478, and 479.)

Hearing Examiner Kolb: Let the record show that 472 through 479 were offered in evidence and that the same objections were made to the documents as were made to the previous documents 401 through 471.

The objections are overruled, and the documents are received in evidence, subject to a motion to strike by Atlantic, without prejudice to the right of Goodyear to raise a motion to strike at a later date.

(The documents heretofore marked COMMISSION EXHIBITS 472 through 479 for identification, were received in evidence.)

2303 Mr. Mason: If your Honor please, on the basis of information which Mr. Kelaher, the attorney supporting the complaint, and I obtained by consultation with the attorney for Sinclair, Goodyear is prepared to stipulate that, if called, an appropriate officer of Sinclair would testify to facts which I will set forth in a moment. We are prepared to enter into this stipulation, reserving an objection to Sinclair on the ground that it involves a non-respondent oil company and on the ground that we do not believe the testimony as to Sinclair is within issues framed within the literal scope of the complaint.

But we are prepared to say that, if called, such an officer of Sinclair would testify first, in terms of identifying persons whose names appear in documents heretofore introduced in evidence, that the Mr. Sellers referred to on Commission's Exhibit 418-A and B is connected with Goodyear; that the Mr. Littleton, referred to in Commission's Exhibit 429, was not connected with Sherwood Brothers; that



the Mr. Lindsay referred to in Commission's Exhibit 435 was connected with Sherwood; that the John Sause referred to in Commission's Exhibit 438 was connected with Sherwood; that "Doc" Allen referred to in Commission's Exhibit 449 was connected with Sherwood; that S. W. Holsinger referred to in Commission's Exhibit 455 was connected with Sherwood; that E. J. Balling referred to in Commission's Exhibit 456-A and B was connected 2304 with Sherwood; that Elmore Evans referred to in Commission's Exhibit 457 was connected with Sherwood; and that these additional persons to whom certain copies of Commission's Exhibit were addressed—Jurgens, Landen, Clarke, Cottman, Leimback, Hall, and Johnson—were all connected with Sherwood. Also that F. Sinclair, referred to in Commission's Exhibit 432, was at the time president of Sinclair Oil Corporation.

We are also prepared to stipulate that Commission's Exhibit for identification 471, which is an official highway map of Maryland containing crayon markings delineating a geographical area, defines the marketing area of the Sherwood division of the Sinclair Refining Company.

We are also prepared to stipulate that an appropriate officer of Sinclair would testify that as of December 1, 1957, there were approximately 251 dealers in metropolitan Baltimore, retailing Sinclair petroleum products, and 180 of such dealers held service station leases from Sinclair; in the Sinclair division, excluding Baltimore, there were 492 dealers retailing Sinclair petroleum products, and 104 held service station leases from Sinclair; in metropolitan Baltimore there was one distributor. In the Sherwood division, excluding Baltimore, there were four distributors. In the Sherwood division there were six branches operated by salaried employees, and there were nine commission marketers.

We are also prepared to stipulate that, if called, 2305 an appropriate officer of Sinclair would testify that no substantial changes were made by Sherwood Brothers, Inc., subsequent to 1953 in the forms of agreement identified as Commission's Exhibits 404, 405-A and B, 407-A through D, 410-A and B, and 413. A number of said agreements may now be in effect under the terms of the merger agreement, Commission's Exhibit 479. All such agreements entered into after January 1, 1956, were on the printed forms of Sinclair, identified as Marketer Agreement, Commission's Exhibit 472; equipment rental agreement, Exhibit 473; station lease, Exhibit 474; refined oil sales agreement—dealer, Exhibit 475; and letter agreement with dealers relating to credit identification cards, Exhibit 476.

We are also prepared to stipulate that, if called, an appropriate officer of Sinclair would testify that Commission's Exhibit 477 is a copy of a credit identification card issued by Sherwood, expiring December 1954, and that Commission's Exhibit 478 is a copy of a credit identification card issued by Sinclair Refining Company, expiring December 31, 1957. The form of cards for the years 1953, 1954, and 1955 are substantially the same as Commission's Exhibit 477. For the years 1956 and 1957 the form used was substantially the same as the Sinclair form, Commission's Exhibit 478.

We are also prepared to stipulate that, if called, an appropriate officer of Sherwood would testify that 2306 during the years 1953 through 1956, there was no change in the corporate structure of Sherwood Brothers, Inc., except its merger with Sinclair Refining Company, effective December 31, 1955.

Mr. Kelaher: It is so stipulated.

Mr. Mason: We are also prepared to stipulate that, if called, an appropriate officer of Sinclair would testify

that as of May 19, 1953, there were approximately 422 retail outlets, of which approximately 233 were lessee dealers.

Mr. Kelaher: It is so stipulated.

Mr. Mason: We are also prepared to stipulate that, if called, an appropriate officer of Goodyear would testify that Albert W. Littleton was a Goodyear field representative in Baltimore in 1946, and left Goodyear's employ in 1947, Mr. Littleton being referred to in Commission's Exhibit 429.

Mr. Kelaher: It is so stipulated.

At this time, your Honor, we are prepared to rest, subject to some check of today's proceedings to see if there may be anything we may have overlooked.

Hearing Examiner Kolb: So you are closing your case for the Commission?

Mr. Kelaher: Yes, sir.

Hearing Examiner Kolb: The matter will be recessed, subject to ten days notice pending disposition of the motion now pending, and will be reset at an early date.

2307 (Whereupon, at 4:55 p. m., the hearing in the above-entitled matter was adjourned, to be reconvened at ten-days notice.)

2308

400 Commerce Street  
Baltimore, Maryland  
Monday, 30 June 1958

Met, pursuant to notice, at 10:00 a. m.

2313 HOLLAND M. HATHAWAY was called as a witness for the Respondent and, having been first duly sworn, testified as follows.

*Direct Examination by Mr. Thompson.*

Q. Will you state your full name and address?

A. Holland M. Hathaway, 100 Croftley Road, Luther-ville.

Q. Mr. Hathaway, you are the Atlantic Refining Company's district manager in the Baltimore district?

A. I am.

Q. I am going to ask you a very few questions about some men who were referred to in the testimony during the presentation by the government of its case.

Do you know a J. W. Varnadore?

A. Yes, sir.

Q. Mr. Varnadore was referred to by one Eugene Savage, a government witness, in the transcript of testimony beginning at Page 1756, and on cross-examination at Pages 1810 to 1812.

Is Mr. Varnadore presently an Atlantic lessee?

A. Yes, sir.

Q. Has Mr. Varnadore been subpoenaed to appear as a witness in this proceeding and to appear today?

A. Yes, sir.

Q. Do you know a Mr. Charles G. McKaig who  
2314 was referred to by government witness Elmer C.

Lang, transcript of testimony 1866 on direct examination, and 1905-1906 on cross-examination?

A. Yes, sir.

Q. Has he been subpoenaed to appear as a witness in this proceeding today?

A. Yes, sir.

Q. Do you know a Mr. William H. Leonard who was referred to by Eugene Savage, a government witness, at Pages 1754 and 1755 on Direct and on cross-examination at Pages 1820 and 1821?

A. Yes, sir.

Q. Has he been subpoenaed to be present today?

A. Yes, sir.

Q. Do you know a Mr. Gabriel Tydings, who was referred to by Joseph Scheiner, a government witness, at Pages 1948 to 1987 on direct examination, and 2004 to 2010 on cross-examination?

A. Yes, sir.

Q. Is he a former Atlantic lessee?

A. Yes, sir.

Q. Do you know what he is now doing?

A. He is a route salesman for Cloverland Dairies, Baltimore.

Q. Has he been subpoenaed to come here today?

A. Yes, sir.

Q. Do you know a Mr. Lester Lewis?

A. I know him.

Q. Was he a former one-time Atlantic lessee?

2315 A. Yes, sir.

Q. Mr. Lewis was referred to by one Elmer Lang at Pages 1868 and 1869 in the testimony. Have you been able to locate Mr. Lewis?

A. Yes, sir.

Q. He is no longer an Atlantic lessee?

A. No, sir.

Q. Has he been subpoenaed to come here today?

A. Yes, sir.

Q. Another man who was referred to in the testimony by Mr. Elmer Lang was a William T. Batchelor, Pages 1866 and 1867 on direct examination, and 1907 and 1908 on cross-examination: Is Mr. Batchelor presently an Atlantic lessee?

A. No, sir.

Q. Have you made an effort to locate him?

A. Yes, we have.

Q. Were you able to do so?

A. No, sir. We are unable to do so.

Q. You were not able to serve a subpoena upon him?

A. We were not able to locate him.

Q. You don't know where he is?

A. Have no idea.

Q. Have you ever heard of a man named Joseph Haekett, who was referred to by Eugene Savage on direct examination at Pages 1822-1824?

2316 A. Yes, sir. He is a former Atlantic dealer.

Q. Did you make an effort to locate him?

A. Yes, we did.

Q. Did you find out where he is?

A. To the best of our knowledge he is somewhere in Tennessee.

Q. You were unable to subpoena him to be present?

A. That's right.

Mr. Thompson: That is all. Mr. Kelaher, do you have any questions to ask on those subjects?

Mr. Kelaher: I have no questions.

Mr. Thompson: Thank you, Mr. Hathaway. You will be recalled at a later point in the hearing.

I have a few more questions, Mr. Hathaway.



By Mr. Thompson:

Q. When Lester Lewis was an Atlantic lessee, was his station known as the L&S Station?

A. Yes.

Q. Was that at 2607 Gwynne Falls Parkway?

A. That is correct.

Q. We referred a moment ago to a Joseph Hackett. Did he run a station called Joe's Atlantic, 829 Eastern Avenue, Baltimore?

A. That is correct.

Mr. Kelaher: May I have a question?

2317

*Cross-Examination by Mr. Kelaher.*

Q. Do you recall the name of Mr. Lewis' partner, if he had a partner?

A. I believe it was Strauss.

Q. Was it Howard A. Strauss, Jr.?

A. I can't testify as to the name, except Strauss.

Mr. Kelaher: That is all.

(Witness excused.)

2560

Room 532

Federal Trade Commission

Washington, D. C.

Wednesday, 2 July 1958

Met, pursuant to adjournment, at 10:18 a. m.

2618 HOLLAND M. HATHAWAY was called as a witness for the Respondent and, having been previously duly sworn, testified as follows:

Mr. Thompson: Mr. Hathaway has previously been sworn and is now recalled.

*Direct Examination by Mr. Thompson.*

Q. Mr. Hathaway, we established when you were  
2619 called on Monday that you are Atlantic's district manager in the Baltimore district.

A. That is right, sir.

Q. What was your first employment with the Atlantic Refining Company?

A. I was first employed by Atlantic in the marine department as an able-bodied seaman.

Q. Was that just before or during the war?

A. It was in 1939.

Q. Did you stay in the Atlantic marine department during the war?

A. Yes, sir, until 1945.

Q. Did you serve on tankers?

A. Exclusively.

Q. What was your position when you left the tanker service?

A. I was a Master.

Q. Weren't you rather young to be a skipper?

A. I guess they were hard to find.

Q. As a matter of fact, you were the youngest in the Merchant Marine at the time, weren't you, Mr. Hathaway?

A. At one time I understand that, yes, sir.

Q. After the war did you continue your employment with Atlantic?

A. Yes, I did.

Q. What was your first post-war position?

2620 A. I went to Boston, Massachusetts, as a salesman trainee.

Q. When you finished your training, did you become a dealer-salesman in Boston?

A. Yes.

Q. How long did you have that position, approximately?

A. Approximately three or four years, I believe.

Q. In your job as a dealer-salesman in Boston, did you handle lessee dealers?

A. Yes, I think I handled only lessee dealers.

Mr. Kelaher: Mr. Thompson, I wonder if we could establish the years as we go along.

Mr. Thompson: May I finish the next question and then I will tie it together, Mr. Kelaher.

Mr. Kelaher: Go ahead.

By Mr. Thompson:

Q. Were you then promoted to sales supervisor in Boston?

A. Yes, sir.

Q. And continued in that position until sometime in 1950?

A. I believe it was 1950. Somewhere in 1950.

Mr. Thompson: Mr. Kelaher, if you want the dates accurately—

Mr. Kelaher: That is accurate enough.

Mr. Thompson: Mr. Hathaway gave me a memorandum which would simplify it. May I show it to him?

Mr. Kelaher: Yes.

2621 By Mr. Thompson:

Q. Using the data which you furnished me, Mr. Hathaway, to refresh your recollection, what year did you leave Boston and in what capacity were you serving when you left?

A. I left Boston in 1950, and at the time I was a sales supervisor in Boston.

Q. From Boston to what city were you transferred?

A. I was transferred to Providence, Rhode Island.

Q. How long did you stay there?

A. I was there approximately four years.

Q. And during that period, what was your position in the Atlantic organization?

A. I was the personnel supervisor for the New England region.

Q. In that position and during those four years, did you have any direct connection with sales?

A. No, sir, I had no sales responsibility at all.

Q. Entirely personnel work?

A. Entirely personnel.

Q. Then at what time were you transferred from Providence to some other position and to what city?

A. I was transferred in 1954 to Charlotte, North Carolina, as the direct marketing supervisor for the Southern region.

Q. That was the early part of 1954?

A. April 1954.

2622 Q. Just in a couple of words, what were the responsibilities of the position of direct marketing supervisor?

A. Direct marketing supervisor is a staff assignment under the supervision of the sales manager of the Southern region, and he is the liason between the region and the different districts having to do with direct marketing activities through service stations, contract sales, any direct marketing accounts that we may have, all phases of gasoline sales, motor oil, TBA, sales promotion, training.

Q. When you were acting in the capacity of direct marketing manager in the Southern region, were there several people who worked under your supervision in charge of various aspects of the type of marketing to which you have referred?

A. There were three main categories under the direct marketing manager. They would be the TBA coordinator, the sales promotion coordinator, and the training coordinator.

Q. Do you recall how long you held that position, Mr. Hathaway, and when you were transferred to your present position? Was it in August 1954?

A. I was transferred to Baltimore in August of the same year.

Q. So that since August 1954 you have been the Atlantic district manager in the so-called Baltimore district?

A. That is correct.

Q. Just to refresh your recollection of a fact 2623 already stipulated, would you be kind enough in a very few words to indicate the geographical extent of the Baltimore district?

A. The Baltimore district includes Maryland, with the exception of the eastern shore, and with the exception of a small portion of Garrett County.

Q. That is the extreme northwestern part of the state; am I correct?

A. Yes. It also includes a portion of West Virginia.

Q. So that except for a very small section in north-

western Maryland, and the eastern shore, your district comprises the State of Maryland plus a small portion of west Virginia?

A. Yes, sir, that is right.

Q. Is it a part of your district manager's job to study and become aware of and know the competitive situation in your district?

A. Yes, it is a very big part of the district manager's job.

Q. Does Atlantic have competition from other oil companies in your district, Mr. Hathaway?

A. Yes, sir, we certainly do. We have a lot of competition.

Q. About how many large or major companies are competing with Atlantic for business in the district?

A. I believe there are eleven all together.

Q. Are there, in addition to the eleven major companies, independents?

2624 A. Yes, there are more and more independents every day.

Q. Becoming more and more aggressive?

A. Yes, sir, they are.

Q. Your headquarters are located in the city of Baltimore?

A. My district headquarters are, yes, sir.

Q. In the city of Baltimore?

A. Yes.

Q. Before I come to that, where are the headquarters of the region?

A. Charlotte, North Carolina.

Q. And just as briefly as you have described the geographical extent of the district, would you please describe the geographical extent of the region?

A. It extends from the Maryland-Pennsylvania line, ex-



cluding the eastern shore, down the eastern seaboard to Key West in Florida.

Q. You referred to the number of competing companies in the Baltimore district. Are there approximately the same number or the same actual companies which compete in the metropolitan Baltimore area?

A. In the—

Q. In the metropolitan Baltimore area.

A. In the metropolitan Baltimore area I would say exactly the same.

Q. The phrase "metropolitan Baltimore" I shall 2625 have occasion to use again. Would you be kind enough to indicate what you mean by it?

A. To me metropolitan Baltimore includes the city of Baltimore; it includes a good portion of Baltimore County from the east around the north of the city and to the west; it includes a good bit of Anne Arundel County which includes principally Glen Burnie; it would include a small portion of Howard County.

Q. Would I be correct in describing it as a kind of semi-circle with the Chesapeake Bay on the east, Baltimore in the center and which surrounds Baltimore?

A. Yes, sir.

Q. Approximately how many gasoline retailers are there in the district? And I am now referring to the entire district.

A. The Baltimore district?

Mr. Kelaher: May I have the question read?

(The reporter read the question.)

Mr. Kelaher: I object to the question unless it is rephrased. I am not too clear on the question myself.

Mr. Thomposn: May I continue for another question, and I will ask him to define what he means by "retailer." I am sure that is what you have in mind.

Mr. Kelaher: All right.

Mr. Thompson: I will rephrase the question to meet your point, which I think is a good one.

2626 By Mr. Thompson:

Q. When I asked you how many gasoline retailers there are in the Baltimore district, I was merely referring to outlets where gasoline is available for purchase by the consumer. I was not referring at this moment to a real service station.

A. Well, I would estimate about 2,200 to 2,300 retail outlets.

Hearing Examiner Kolb: Is that exclusive of service stations?

Mr. Thompson: I am coming to that next, sir.

By Mr. Thompson:

Q. Does that number of 2,200 or 2,300 include what we refer to as service stations?

A. Yes, sir.

Q. How would you define a real service station?

A. I would define a real service station as one that dispenses gasoline, can also do lubrication, possibly washing, can do tire repairs, minor repairs, sells TBA, handles the installation of TBA.

Q. Of the 2,200 or so gasoline retailers in your district, would most of them be service stations in the sense in which you have defined it?

A. No, I would say possibly 1,200 or 1,300 would be real service stations.

Q. May I now direct your attention to metropolitan Baltimore, as you have defined it, and I would like to ask you about how many retail outlets, including service stations, there are in metropolitan Baltimore.

Mr. Kelaher: Your Honor, I wonder if we can have some statement of the purpose of this type of testimony. I am not too clear of the relevancy of it at this point.

Mr. Thompson: It must be obvious to your Honor.

Hearing Examiner Kolb: I am rather confused about these outlets other than service stations.

Mr. Thompson: I don't understand the nature of your Honor's confusion. I should be happy to try to help.

Hearing Examiner Kolb: Are you taking in bulk plants and everything else in that?

Mr. Thompson: That was not within his definition, sir. His definition was retail outlets where gasoline is sold to the consumer.

Hearing Examiner Kolb: Bulk plants sell to fleets. They would be consumers.

By Mr. Thompson:

Q. In your estimate, Mr. Hathaway, were you including such places as bulk plants which serve large industrial accounts?

A. No, sir.

Q. This is just the place where you can buy gasoline for an automobile?

A. Yes, sir.

2628 Q. We are now coming to the question of gasoline outlets and real service stations in the metropolitan Baltimore area. Can you tell us from your long experience and knowledge about how many of each type there are?

A. I would say in metropolitan Baltimore there are probably 1,200 retail outlets, of which approximately 1,000 of them would be real service stations.

Q. Are new service stations being built every year in the Baltimore district?

A. Yes. Every year. It seems like every day.

Q. Have you statistical information available to you

which keeps you advised of the number of such stations which are being constructed?

A. Yes, we try to keep advised of that.

Q. Is it part of your job to know the answer to that question, what your new competition is?

A. I consider it part of my job, yes.

Q. About how many new stations have been built in your Baltimore district in the last year or so?

A. Well, in 19—

Mr. Kelaher: Your Honor, if he has to test this, it would probably be easier if he furnished the statistics.

Hearing Examiner Kell: The witness may answer, if he knows.

2629 By Mr. Thompson:

Q. Answer the question.

A. Our last count showed that in 1957 and the first three months of 1958 there were 100 new service stations constructed.

Q. In Maryland?

A. In Maryland.

Q. And about how many of those would have been in the Baltimore district, your Baltimore district? I am not talking about metropolitan Baltimore; I am talking about your Baltimore district.

A. In all Baltimore it would, as I recall, be more than half.

Q. Are you now referring to the metropolitan Baltimore district? I think we have to distinguish between the two.

A. Metropolitan Baltimore would be approximately half.

Q. You mean Metropolitan Baltimore?

A. Yes.

Q. Then most of the rest of them would have also been built in your so-called Baltimore Atlantic district?

A. Yes.

Q. How many lessee stations does the Atlantic Refining Company have in the Baltimore district?

A. We have 93 lessee stations.

Q. About how many of the 93 are in the metropolitan Baltimore area?

2630 A. About 70.

Q. Could you just indicate briefly where the other 23 are located in your Baltimore district?

A. We have some in Cumberland; we have a couple in West Virginia; we have some in Hagerstown; we have some in southern Maryland; what we call southern Maryland which is down Route 301; we have a few around Washington suburban area.

Q. But you have none in the District of Columbia, have you?

A. No, sir.

Q. Does Atlantic also sell gasoline through so-called contract stations in your district?

A. Yes, sir.

Q. About how many contract retail outlets have you, including what you have defined as real service stations?

A. We have somewhere around 60.

Q. And of those, how many would you classify as real service stations?

A. No more than five or six.

Q. In addition to selling gasoline to your lessees and to your contract stations, do you also sell to distributors in the Baltimore district?

A. Yes, sir.

Q. How many distributors have you?

A. We have six.

Q. Do those distributors in turn sell to retail 2631 outlets and service stations?

A. Yes, sir.

Q. Could you tell us how many real service stations are supplied in your district by the distributors?

A. All together, about twelve.

Mr. Kelaher: How many?

The Witness: About twelve.

Mr. Kelaher: Did I understand the question correctly? Is it twelve service stations are supplied by the six distributors?

Mr. Thompson: Twelve real service stations supplied by the distributors.

Mr. Kelaher: Real service stations.

2632 By Mr. Thompson:

Q. Mr. Hathaway, would you describe in a general way some of your duties and responsibilities?

As a preliminary question: Are you in general charge for Atlantic of the Baltimore district?

A. I am.

Q. To whom do you report?

A. I report to the Regional Manager.

Q. Who makes the policy decisions for Atlantic in your district at the district level?

A. At the district level, I make decisions.

Q. What do you regard as your primary responsibility as District Manager?

A. My primary responsibility is to promote the sale of gasoline through our own service stations and other outlets.

Q. Are your other activities secondary to that primary objective?

A. As far as I am concerned, that is the objective in everything we do and I would even go on to say that that is the objective of everybody who works in this district.

Q. In your capacity as District Manager, do you direct the activities of the Atlantic personnel who are located in your district?



A. Yes, sir.

Q. Do you have an annual expense budget?

2633 A. Oh, yes.

Q. About how much does that budget run a year?

A. It runs somewhat over \$500,000.

Q. Do you recall what it is for this year?

A. I believe it is \$578,000 for 1958.

Q. You are referring to the expense budget, which is under the control of the District Manager?

A. Yes.

Q. What are the principal items of expense which are included in that budget?

A. Well, the principal item, of course, is payroll expense, service station maintenance, terminal up-keep and maintenance, administrative expenses, selling expense. That would be—

Q. Truck maintenance? Is truck maintenance in your budget?

A. Maintenance, yes.

Q. Truck maintenance?

A. Yes.

Q. You referred to terminal expense. What is the terminal?

A. The terminal is the bulk plant where we store our oil and where we warehouse motor oils and that sort of thing.

Q. Are Atlantic's capital expenditures in the Baltimore district included in your District Manager's expense budget?

A. No, sir; no capital expense.

Q. The purchase of sites for service stations, would that not be included in that budget?

2634 A. No, sir. That is capital.

Q. Or the purchase of new trucks?

A. No, sir. That is capital.

Q. Or depreciation on stations or trucks?

A. No, sir. That is not in.

Q. The company trucks or new stations?

A. Has nothing to do with our expense budget.

Q. Or alterations or remodeling of stations which are not mere maintenance?

A. No. Alterations and remodeling would be under capital.

Q. How is your district organized under you? Have you got personnel which have direct contact with your various lessee and other dealers?

A. Yes, I have a sales group.

Q. By classification, who is in the sales group?

A. A sales supervisor, promotable dealer salesman, general salesmen, service salesmen, and I think that covers it.

Q. Do you have a credit supervisor?

A. I have an office manager.

Q. Going back over the people that you have mentioned that have contact with the dealers, there is one sales supervisor?

A. Yes. We have one sales supervisor in the district.

Q. And how many promotable dealer salesmen do you have?

A. I have four promotable dealer salesmen.

Q. How many service salesmen?

2635 A. Four service salesmen. And five general salesmen.

Mr. Thompson: Mr. Kelaher, I don't want to prolong Mr. Hathaway's testimony.

The stipulation, you will recall, describes in a general manner the duties of each of those classifications of salesmen. Would it be of any assistance to your Honor if he, in about four sentences, refreshed your recollection with respect to the jobs that these various people do, what their primary responsibilities are?

Hearing Examiner Kolb: It may be well to have that in the record.

By Mr. Thompson:

Q. Mr. Hathaway, just as briefly as you can describe it, what is the job of the sales supervisor?

A. The sales supervisor is directly concerned with the lessee dealers and contract dealers. It is his job to supervise the promotable dealer salesmen and the general salesmen and the service salesmen in their duties connected with principally the lessee dealers.

Q. Is he second in command in the district?

A. Yes.

Q. In your absence would he function for you? Would he assume your responsibilities? or some of them?

A. May I clarify that? I have also an operations supervisor who is on exactly the same level as the sales 2636 supervisor. One, I think, would be more apt to take command of his own group and the other would handle his people in my absence. If it came to choosing one, I believe I would choose the sales supervisor as the top man.

Q. Your four promotable dealer salesmen report first to the sales supervisor or directly to you?

A. No, sir, they report to the sales supervisor.

Q. What, again, as briefly again as you can describe it, are the duties and responsibilities, the principal ones, of the promotable dealer salesmen?

A. The promotable dealer salesman handles only lessee dealers. His job is to keep the stations operating with the best possible lessee dealer that he can have; to promote the sale of gasoline; and to help them increase their sales of gasoline.

Q. That is their primary responsibilities?

A. As far as I am concerned, yes, sir, that is it.

Q. How about your service salesmen, what do they do?

A. The service salesmen work more or less under the promotable dealer salesmen in training new dealers, training dealers' employees, helping dealers in solicitation or setting up promotions, or that sort of thing.

Q. What do your general salesmen do?

A. The general salesman handles some lessee dealers and also some contract dealers, and possibly some 2637 consumer accounts.

Q. In addition to those people whose functions and primary responsibilities you have described, you, of course, have other personnel in the district.

A. Oh Yes.

Q. And they report either directly or indirectly to you?

A. Yes.

Q. You mentioned, I think, your operations supervisor.

A. Yes. I have an operations supervisor who heads up the Operations Department. Under him would come people such as your chauffeurs, warehouse people, terminal people, dispatchers, pump and tank mechanics, automotive mechanics.

Q. Then you have, I think, a distributor salesman who handles the six distributor accounts?

A. I have a distributor salesman who handles our distributors, a wholesale salesman who handles wholesale fuel oil accounts, and we have—

Q. Do you have another classification called "industrial salesmen"?

A. Oh, yes. I have an industrial salesman who handles big or industrial firms, factories and that sort of thing.

Q. So-called commercial accounts?

A. We call them industrial accounts.

Q. Do you have a real estate representative, too?

A. Yes, sir, we have one real estate representative.

2638 Q. Who in your organization handles credit problems arising out of dealer—out of credits to dealers?

A. Of course we have a credit department based in Charlotte. The office manager of the Baltimore district does handle credit policy on a local level.

Q. What are your responsibilities generally and without going into detail, with respect to leases and supply contracts?

A. Well, I select, I am the final approver as far as the lessee is concerned—

Q. To keep the record straight, are you saying that you are the person in the district who makes the final selection of some prospective operator of a lessee station?

A. Yes, sir.

Q. Are you also the person in the district who makes the final decision whether a particular lease will or will not be renewed?

A. Yes, sir.

Q. In the event that you had occasion to terminate a lease for cause, would the notice of such termination be your responsibility? The decision whether to terminate, would that be your responsibility?

A. Would you clarify that just a bit? Do you mean during the term of a lease?

Q. Yes.

A. Yes, it would be my decision to terminate.

2639 Q. If you had to terminate a lease for cause during the—

A. If we had to during the term of the lease.

Q. Who, in the Atlantic organization, executes the supply contracts for your district?

A. I execute supply contracts.

Q. You have referred to your responsibility of keeping the 93 company-owned stations operating with lessees. Do you find it easy or difficult to find competent lessee operators in the Baltimore district?

A. I think that is probably the hardest job that we

have. By "we" I mean my sales supervisor and myself and my salesman—to find good, competent dealers who can operate our stations. It is extremely difficult to find them. It is difficult in some ways to hold them. Of course, every company is looking for the best dealer that they can get to run a particular station which in itself subjects all of us to raiding each other in trying to entice each other's dealers away from them in any way that we can.

Q. There is no stand-by arrangement among the major oil companies in your district not to ~~void~~<sup>raid</sup> each other's dealers?

A. If there is, I have never seen it.

Q. Is there?

A. No, sir. I will take every dealer that I can get from any competitor at any time, if he is any good.

Q. Do you find that your competitors have the 2640 same attitude with respect to Atlantic?

Mr. Kelaher: Objection.

Hearing Examiner Kolb: Overruled.

A. Yes. My competitors will take every good dealer I have got, if they can get away with it.

By Mr. Thompson: \*

Q. You referred to a "good dealer". How would you describe a good dealer?

A. To me, a good dealer is a dealer who is a good manager, and that means a good manager of money, a good manager of people, of people that are working for him, a good manager of his stocks and his records, and inventory, a man who isn't afraid to work hard, who has a good sales ability or a sales appeal to the public, somebody who can be out and solicit for business and make people like him enough to want to come in and do business with him; somebody who will keep a station clean and attractive, who is always interested in getting additional business.

I think that about covers it.



Q. Do you know, from your experience, what a good dealer, as you have described him, can net annually out of the operation of an Atlantic service station?

A. Yes. A good average dealer can net between \$10,000 and \$15,000 a year.

Q. Have you some that do considerably better than that?

2641 A. Yes, we have some who admit to doing considerably better.

Q. As high as what?

A. As high as \$25,000 a year.

Q. Does Atlantic have an interest in its good dealers taking an active interest in civic and community affairs?

A. Yes. We would like very much to have all of our dealers become active in their community. It is very good business. They are doing business with the people in their community, and I think we like to have them looked up to as solid, substantial businessmen. And anything that they can do to help themselves get established in their community by joining various organizations, such as community clubs and businessmen organizations, chambers of commerce, and that sort of thing, we would certainly like to help them, and we do try to promote it.

Q. Are a number of them active in Rotary and similar organizations?

A. Yes, a number of them are.

Q. Have a number of them attained the community status which you try to get them to attain?

A. Yes. Surprisingly enough, a number of them are very well respected in their communities. They are in various organizations such as Rotary and Kiwanis and Lions. I have heard of a few dealers, not our own, who have even been—

Mr. Kelaher: Objection, unless he is talking about  
2642 his own dealers.

The question pertains to his own dealers.

Hearing Examiner Kolb: The objection will be sustained.

By Mr. Thompson:

Q. Did you preface your remark with "surprisingly enough", Mr. Hathaway? Does this status of your dealers surprise you?

I wonder what you meant by "surprisingly enough".

A. Well, when you talk a long time to a dealer in trying to get him to join in the community affairs, sometimes it does surprise you just how far they go with it, and just how many organizations they do belong, and just how substantial they do become in their communities.

Q. Did you tell me one of them was the mayor of a town?

A. Mr. Kelaher objected to my talking about him.

Mr. Kelaher: He was with another station, I take it, another company.

By Mr. Thompson:

Q. Do you try to keep a good list of dealers in Atlantic?

A. Yes, sir; we will do every thing we can to keep our good lessee dealers with us just as long as we can keep them with us.

Q. Do you try to help them to be successful?

A. We will do anything we can to help them be successful.

Q. When you have to replace a lessee dealer, is 2643 there any expense involved?

A. Yes, there is considerable expense.

Q. Would you amplify that and tell us what it would involve?

A. Well, we like to send all of our new dealers through a training school, which is of five-week duration. Our training school in this region costs us \$780 per trainee. To-

gether with that when we put a man in the station we put a service salesman in with him for two weeks which costs us approximately \$250.

To estimate the time that a salesman spends in looking for a dealer would be very hard to do. The time that the sales supervisor spends in assisting the dealer, or the dealer salesman, excuse me, to find a dealer is something else I wouldn't know how to estimate. The number of ads we put in a paper, the running around that we do in our automobiles, the night work, and that sort of thing involved in looking for a dealer is something that I just wouldn't know how to measure.

Q. If a station shut down and you had no lessee, you would lose gallonage, too, wouldn't you?

A. I would lose gallonage, and a lot of sleep, and so would everyone else involved, I think.

Q. In your experience, have you found whether good dealers do or do not develop their personal following of customers?

A. Yes. Any good dealer will develop a goodly 2644 portion of his business as a personal business. People come in to see the dealer. They don't come in to buy a particular brand. They come in because they like the man, they like the service they get, they like the way they are treated, and the work that is performed on their car. So each dealer, each good dealer, you can certainly point to a great portion of his business as being his own business.

Q. Does such a dealer have any difficulty in your district in finding another station to operate, other than Atlantic?

A. Any good dealer in Atlantic in our district, could find any number of good stations, if he wanted to.

Q. Are dealers of the type to which you refer economically dependent upon Atlantic?

A. No, they certainly aren't economically dependent

upon Atlantic. In fact, Atlantic is much more dependent upon its dealers than any dealer is dependent upon us.

Q. Mr. Hathaway, from time to time you do lose lessees, do you not?

A. Yes, we do.

Q. What are the primary reasons why you lose them?

A. I think there are several reasons. One of them is that the man might become ill. He may not like the hours, because the hours are long. He may not like the hard work, because the work is hard.

One of the things that is becoming increasingly difficult is the fact that his wife doesn't like the hours that he spends working at the station.

He may have financial problems, either he goes broke, he may over-extend himself on credit to his customers, and of course when they don't pay him immediately he is in trouble financially.

The neighborhood could change from a residential to commercial and he might lose a lot of business that way and just become discouraged and want to leave for that reason.

Q. What is the Atlantic policy in your district and what is your policy with respect to term of leases?

A. To term of leases?

Q. Yes. What duration?

A. Our leases—

Q. How many days, weeks, months, or years, in other words?

A. Our lease, we have a one-year lease which we give to a new operator for a two-year period. At the end of the second year we extend to him a three-year lease.

Q. Suppose one of your lessees had a three-year lease, and wants to quit at the end of six months or a year and a half, or some time before the end of the lease. What is your policy with respect to that lessee?

A. Our policy then is to immediately go out and look for a replacement for that particular dealer and as soon as we can get one we replace the man and allow him 2646 to cancel his lease by mutual consent.

Q. In other words, you don't hold him to the full term of his lease if he wants to leave?

A. No. There would be no sense in trying to hold him if he wanted to go. He certainly would not want to do much business while he was there, and we would have nothing to gain by trying to keep him.

Q. Do you recall any situations since you have become the District Manager in the Baltimore District where, during the term of a lease, you have cancelled the lease for cause?

A. No, sir. There has been none of that since I have been District Manager in Baltimore.

Q. What percentage of the lease terminations during the term of lease have been instigated by the dealer or with the dealer's full consent? All of them?

A. 100 percent.

Q. Do you know what this thing is that is called a "warning letter" to a lessee?

A. I know what it is, yes.

Q. Have you had occasion to write warning letters to lessee dealers since you have been District Manager in the Baltimore District?

A. I wrote one once. That was some while ago. I just don't use them myself. I think it is much better to go out and talk to the dealer and tell him what the problem 2647 is, discuss it with him, and in every case we have seen eye-to-eye and been able to straighten out our difficulties and gone on from there.

Q. What sort of difficulty would cause you to make that kind of visit to a dealer?

A. We think a dealer, in order to do business in our



station, has got to keep a clean-looking station, attractive to the motoring public. We want him to keep the rest rooms clean. And that can be quite an irritating problem in some cases.

We also, of course, want him to give good service as well as keep the place clean. And that would be the only problem that we would have, would be in housekeeping. And somewhat in service.

Mr. Thompson: Off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: We will take a recess for five minutes.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

By Mr. Thompson:

Q. Mr. Hathaway, before the brief recess you referred generally to the fact that there were difficulties in 2648 finding lessee dealers in your district. Would you describe for us how the district goes about locating potential dealers? What do you do?

A. Well, we put ads, of course, in the newspaper.

Q. Before you go to another subject: Do you find that an effective means of producing potential dealers?

A. Newspaper ads?

Q. Yes. Does it work? Do you get response?

A. We get some response. It is not any more effective than any other way.

Q. What other means do you adopt besides newspaper advertising?

A. Of course we contact competitive dealers, we contact competitive dealer's employees, we contact our own



dealers in hopes that they would know of a customer or friend who might be interested; we contact our dealer's employees; we go to clubs, to the police department, the fire department, any organization that we can find. We even go to churches, we go to barber shops, we go door-to-door soliciting. I would guess we go just any place that we think we can possibly find anyone who would either know of anybody who would be interested in a service station or who themselves might be interested.

Q. When you say "we", do you refer to yourself as well as your salesmen? Do you personally participate 2649 on occasions in the search for lessees?

A. Mr. Thompson, I am always on the search for lessee dealers myself.

Q. How do your salesmen get to know competitive dealers and their employees?

A. I personally try to get my salesmen to contact every competitive dealer in their particular territory as they make their rounds, to look at them, to know them, so that in the event they find that he is a good dealer and can become friendly and get a chance to tell them how good Atlantic is and how good our stations are, that perhaps when the time comes that we need a dealer we can steal that particular man.

Q. Do you think, sir, that is a violation of Section 5 of the Federal Trade Commission Act?

A. Sir, I don't know Section 5.

Q. As a practical matter, if you can raid a competitor and get one of his lessees or the attendant of his lessees, does that save Atlantic expense?

A. It not only saves us expense because we have much less training to do, it also has the added inducement of having the man bring with him some of his customers who traded with him because they like him, and he can usually transfer them to the next station that he takes.

Q. Mr. Hathaway, I wish you would describe for us the procedure for screening potential dealers. Let us  
2650 assume that one of your salesmen has located somebody that might be a prospect. What happens?

A. Our salesman in the very beginning would sit down with the applicant and discuss Atlantic, would discuss the station, would discuss the prospect's finances, his experience, try to determine in the station-man's mind the man's potential ability to run a station successfully, and once he has determined all of those facts then he would bring him into the office or ask the sales supervisor to meet with him in the field to interview the applicant a second time and give—

Q. Excuse me. You said he would do that. Is that in fact what happens?

A. Yes. Always.

Q. Go ahead.

A. The sales supervisor then has a chance to go over the same facts and arrive at his own decision as to how he personally feels about the man. If the salesman and sales supervisor both agree that this is a good prospect, one that they would like to see in an Atlantic station or in any particular Atlantic station, then they bring him in to me and sit down with me and I, too, discuss Atlantic, the station, the potential, and so forth, with the prospective dealer.

Q. Under the routine when the salesman brings a potential lessee to an interview with the sales supervisor, is there any discussion of TBA and, if so, what is it?

2651 A. They discuss TBA. They discuss the fact that we, in Atlantic, think a dealer should sell TBA because it is advantageous to him in the station, and it helps build the business and make customers, well, increase his customer business. They discuss with him the fact that we sponsor Firestone TBA in this district. They discuss

with him the fact that we do not in any way force or try to coerce the dealer to buy, that he has complete freedom of choice. However, that we would like him to carry TBA regardless of where he gets it.

Q. If the potential lessee passes the supervisor and he is brought to you as District Manager for your final decision, do you have a personal conversation with him?

A. Yes, I do.

Q. Would you indicate the nature of the discussion that you have? What do you talk about?

A. Yes. I talk about the station itself, the business potential that I think it has, what we expect of a dealer in the way of good appearance and good service, good operation. I discuss the fact that we are interested in gallons in that station, and helping him every way that we can to build up the volume of gallons in the station. The fact that we are interested in helping him become successful and become a sound, solid businessman. The possibility of him getting acquainted in the community in which he is going to do business.

We talk about—I talk to him about the fact that we do promote Firestone in the Baltimore district. However, I make clear to him and make sure that he understands that there is no forcing, no coercion, that he can buy whatever he wants wherever he wants it, and that he has a complete freedom of choice.

Q. Assuming that the man gets by the interview with you and that a lease is signed, is there any document delivered to him with his lease, and if so, what is it?

A. Yes. With his lease he has a 11-point letter and the "No Forcing" letter.

Q. By the "No Forcing" letter, you mean one of the letters in the form written by Mr. Colley stating Atlantic's TBA "No Forcing" policy?

A. That is correct.

Mr. Kelaher: Your Honor, there are a number of such letters in the file. I wonder if we could have a reference to a specific exhibit.

Mr. Thompson: Happily. I thought we had them in the record so many times we didn't need them any more.

Mr. Kelaher: I am just asking which one.

Hearing Examiner Kolb: It is already in the record.

Mr. Kelaher: Just refer to the exhibit number.

Mr. Thompson: Commission Exhibit 207.

2653 By Mr. Thompson:

Q. Is it your job as Atlantic's District Manager to implement and enforce that "No Forcing" TBA policy?

A. Yes, sir.

Q. What is your understanding of that policy, Mr. Hathaway?

A. My understanding of the policy is that we promote Firestone. However, a dealer is free to buy where he wants it, or where he wants, what he wants, when he wants, and that our salesmen in no way, shape or form will do anything to force or coerce the dealer.

Q. Have you any policy against non-Firestone TBA?

A. None whatsoever.

Q. How does your sales organization, the sales people who work under you, learn that that is Atlantic's policy?

A. Well, they see the letter when they deliver it with the lease, for one thing. They have gone to a training school where the dealer and the salesman-trainee hear the "No Forcing" policy explained. They hear me talk about it when I talk to prospective dealers. I am sure they would hear the sales supervisor talk about it when he talks to prospective dealers.

Q. Can you state, of your own knowledge, that your salesmen know that policy?

A. My salesmen know that policy.

Q. You referred, a few moments ago, to some 2654 statements which you made to prospective lessees about advantages to them in selling TBA at their station. I would like you to supplement those few remarks by explaining the reasons why Atlantic has a TBA program in your Baltimore district at all.

Is my question clear?

A. Yes, sir.

Mr. Kelaheer: It isn't clear to me.

Would you read it?

Mr. Thompson: Then I would like to have it repeated because it is an important question, Mr. Kelaheer. And if you don't understand it I am sure the witness won't understand it.

Mr. Kelaheer: I am not saying I didn't understand it. You lost me about half way down.

Hearing Examiner Kolb: Read the question.

(Question read.)

The Witness: The advantages to a dealer are mainly that it will help him increase the business in his station. A dealer today won't make money selling simply gasoline.

A customer today wants to be able to buy just about anything for his automobile in the station in which he is going to trade.

We think that the advantages of having a program 2655 with a quality name such as Firestone is advantageous to the dealer because it is an item that is easy to sell; it is a nationally advertised brand; it is very well accepted in the Baltimore area; the price to our dealers is good; very competitive; the service is good; there is one service point that the dealer has to think about; there is one Firestone salesman that he would have to worry with instead of a bunch of different suppliers for very different items; our own people know something about the

quality and the methods and the ways to sell it. I am running out of—

Q. Without such a plan, would the inexperienced dealer, in your opinion, be at a disadvantage?

A. I think the inexperienced dealer could be at a great disadvantage because he wouldn't know what he should have. He would be visited by droves of jobber salesmen who would be trying to sell him just about anything and everything; he would have an inventory of items which may wind up as being unsalable, sitting on his shelves and tying up his money; he might not have an item which he could sell because it isn't nationally advertised and a good quality brand, so that his customers might object;—

Q. I don't mean to interrupt you, but might I ask you this question—

Mr. Kelaher: I think he was finished, wasn't he?

2656 By Mr. Thompson:

Q. Had you finished, Mr. Hathaway? I have a supplemental question.

A. Please go ahead, sir.

Q. Does Atlantic regard it as part of its function to advise dealers, regardless of brand, what types and items of TBA they will find salable?

A. Oh, yes. Yes, we like to do that because we want a dealer to be successful. That is our main object in life. If he can be successful he is going to sell more of our gasoline.

And that is all that we are really interested in, selling more gasoline and more Atlantic motor oil. And if we can help a dealer get his money in items that he can move, regardless of what they are, so that he can realize a good profit return on that merchandise, then he is going to be able to build himself up successfully as a good businessman and his station will sell more and more volume of gasoline.



2657. Q. Is it true, Mr. Hathaway, that from time to time new and improved items of TBA are introduced by one company or another?

A. Yes. I think—well, let's take a look at the dry-charge batteries. They came out not too long ago. They were introduced—I have heard it mentioned that Firestone was the first. It was a new item. A lot of people didn't know much about it. Our people were trained and explained the whole situation as far as the story on the new item. They in turn explained it to our dealers. Tubeless tires and other things, that was a relatively new <sup>item</sup> ~~item~~. There were a lot of questions about it, how you change a tire, and how you put a tire on a wheel, a new tubeless tire on a wheel, what it does, how you repair them. All of those things are new to the trade, and somebody has to get out and explain to these dealers so that they know how to service them.

Q. Is that a part of the function of your sales force?

A. Yes, sir.

Q. You have explained why a TBA line is advantageous to the dealer. I think you mentioned in passing that you regard the sponsorship of a good brand as advantageous to Atlantic. Have you specific reasons for that statement?

If I haven't made that clear, I can simplify my question.

Why is it advantageous to Atlantic as a company to 2658 sponsor the Firestone line?

A. In my opinion it is advantageous to Atlantic because it does promote the sale of more Atlantic gasoline, and it makes our dealers more successful. And a successful dealer is a dealer who is selling more and more gasoline every single year.

Q. You have explained fully and clearly Atlantic's "no forcing" TBA policy. Why is that Atlantic's policy?

A. Well, it isn't good business to force a dealer to do

anything. He is only going to leave you. And if a good dealer leaves you then we lose business.

Q. Could you force your dealers to buy something they didn't want, if you tried to?

A. I have never seen one that you could—a dealer, that is, that you could force him to do something he didn't want to.

Q. Is a part of your job to handle dealers complaints?

A. It is part of my job, and it is also part of the sales supervisor's job.

Q. To the extent that you get complaints, what do they relate to primarily?

A. Dealer complaints relate primarily to the fact that they don't have enough facilities in their station, they want another bay or they want a bigger window, or remodel the whole station, or put more pumps on, widen the driveway.

2659 Q. Have you ever in all your experience as Atlantic's district manager ever received a complaint from any dealer that any Atlantic salesman was trying to force or pressure him to buy Firestone TBA?

A. No, I have never heard of such a complaint, either as district manager or before that.

Q. Atlantic inspects its stations, does it not?

A. Oh, yes.

Q. Would you briefly describe what types of inspection of stations are made?

A. Yes. We inspect their appearance and we inspect their service, because as far as we are concerned, as I think I probably said before, a good station is one that is attractive to the motoring public to get them into the station, and when they come in gives them good service in order to keep them coming back.

So therefore, we have what we call a shopper inspection in which we send people around to approach the station as

a customer would, and just record what they see as a customer as far as the outside appearance of the station. Either it is attractive to them or it is dirty; their rest rooms are either clean or they are dirty; and the service that you get at the pump island either is good service or bad service.

Q. Is the type inspection you are referring to made in the district under your supervision?

2660 A. Occasionally.

Q. Does the region inspect your stations? Does the regional headquarters inspect your stations?

A. Yes. The region has a definite plan set up to inspect our stations during the year.

Q. Does Atlantic's home office in Philadelphia occasionally send somebody out to inspect your stations?

A. Yes. They have a plan in which they inspect a percentage of the stations in the region during the year.

Q. Is my understanding correct, then, that there would be inspections that would emanate from three different levels: the district, the region, and the home office?

A. Yes. But primarily from the home office and the region.

Q. Do the results or reports of such inspections come to your attention?

A. Oh, yes.

Q. Is the brand of TBA carried by your dealers ever the subject matter of any comment in any of those reports?

A. No. TBA has absolutely nothing to do with it. We are interested, as I said, in the appearance of the station and in the service that the person gets at the pump island.

Q. Mr. Hathaway, is a part of your job to get out to the field and see your dealers yourself?

A. Oh, yes.

Q. Do you sometimes do it all by yourself?

2661 A. Yes, occasionally.

Q. More usually do you go with another one of your salesmen or the sales supervisor?

A. Yes, I like to ride with my salesman or with my sales supervisor.

Q. Do you know each and every one of your lessee dealers?

A. Yes, I know them all.

Q. Have you visited each and every service station at which Atlantic gasoline is sold in your district?

A. Oh, yes. I visit them frequently.

Q. In addition to your lessees, do you know your contract station operators?

A. Yes. I would see them not as frequently, probably, but I do know them and I do see them occasionally.

Q. Do you even visit from time to time the service stations which are supplied by Atlantic distributors?

A. Oh, yes. Yes, sir.

Q. When you visit these stations, do you observe the TBA which they are selling? Do you see it?

A. Yes, I try to observe everything that I can when I visit the station.

Q. If a dealer is handling non-Firestone TBA, from your own observation, is it openly displayed?

A. Oh, certainly.

Q. Do you see it in these stations?

2662 A. Yes, sir. It is open so everybody can see it.

Q. You of course know that your various dealers sell TBA on Atlantic credit cards. Does that make the slightest bit of difference in the world to you whether the TBA charged on Atlantic credit cards is sponsored or non-sponsored TBA?

A. It wouldn't make a bit of difference to me what it was.

Q. The TBA credit tickets are routed through your office to the credit department in Philadelphia, are they not?

A. They would be when they are used by the dealer as cash payment, or in lieu of cash.

Q. And that is a system by which the dealer is permitted to come to your office and cash credit tickets?

A. No—

Mr. Kelaher: Objection. I think on questions of this type, instead of a leading question, it would be better to ask just what the procedure is.

Mr. Thompson: Mr. Kelaher, I was trying to conclude this afternoon, but I see now it is going to be impossible. So I apologize for the leading question. I confess my error. I was merely trying to expedite the hearing. I will now ask it in the proper manner.

Mr. Kelaher: Very good. Very well said.

By Mr. Thompson:

Q. Would you be kind enough to explain, sir, how this credit deal works?

2663 A. Let me go back to the beginning.

A dealer writes up a credit ticket on a credit card sale, holds them in his station and has the prerogative of either sending them to Philadelphia to our credit department, which if he does has a check returned to him from the Philadelphia credit department, or he can use those credit tickets to pay in lieu of cash for gasoline or motor oil which we deliver to him.

In the event they are used as cash to pay for gasoline or motor oil, the chauffeur would bring them back and turn them in to the cashier in our district office.

Q. Will you be kind enough to state when the credit tickets—is that what you call them?

A. Yes. That is what I call them.

Q. —when the credit tickets are brought into your office, whether some one does or does not look at them to ascertain whether TBA is or is not a sponsored brand?

A. Some one adds up the money to see that the dealer got the right addition, and that is the end of it.

Q. Is it a matter of supreme indifference to you what brand of TBA is on the ticket?

Mr. Kelaher: Objection, your Honor.

Mr. Thompson: I withdraw the question.

Hearing Examiner Kolb: Overruled. Let him answer.

2664 A. I don't see the tickets, so it is absolutely no concern of mine.

By Mr. Thompson:

Q. Seriously, Mr. Hathaway, is any point made by your organization with respect to the brand sold on credit cards?

A. No, sir, no point whatsoever.

Q. From your observation in visiting your lessee stations, contract stations, and the stations supplied by your distributors, what TBA brands do the dealers carry?

A. What do they carry? What brands?

Q. Yes. What do they carry?

Mr. Kelaher: Objection, your Honor. Unless we attempt to get some foundation laid similar to the type we were required to lay every time we got into this question.

Mr. Thompson: I don't know what you are talking about.

Hearing Examiner Kolb: He is talking about the men in this man's district. He knows the dealers and visited them periodically. I think he should be able to answer that.

Mr. Kelaher: Would you read the question again, please?

(The reporter read the question.)

Mr. Kelaher: I think counsel intended to add "in your district."

Hearing Examiner Kolb: He mentioned, the ones  
2665 which he visited, so I assume it would be limited to his district.



The Witness: The numbers of brands of varied items are so many I couldn't name all of the brands. All I can say is that the dealers buy what they want to buy from wherever they want to buy it, any kind of brand they want to buy, because they are all over, they all have every different kind of brand, it seems.

By Mr. Thompson:

Q. I will come back to that with a little more detail later.

Mr. Hathaway, in your district approximately what are your gross commissions from the Firestone Company per annum?

A. Approximately \$20,000.

Q. That would be about \$1,700 a month?

A. About.

Q. On your annual expense budget for your district, if my recollection serves me correctly, for non-capital items, payroll and maintenance, as you have described, it is in excess of a half million dollars a year?

A. That is correct.

Q. And this year it is running at the rate of \$578,000?

A. That is correct.

Q. So that your TBA commissions would be about four percent of your out-of-pocket payroll and expense 2666 budget in your district; is that correct?

A. That is close, yes.

Mr. Kelaher: What did you say?

The Witness: It sounds close.

By Mr. Thompson:

Q. What are your gross sales of petroleum products in your district each year?

A. Our gross sales would be about \$8,000,000.

Q. Are you a good enough mathematician to tell me without a calculating machine what percent of your gross

sales are represented by the gross commissions received from Firestone?

Mr. Kelaher: Your Honor, I am going to object to this line of questions unless we are a little more specific; unless we lay a foundation for the sales involved and other factors which he is casually talking around here.

Mr. Thompson: I will be glad to make it more specific.

Hearing Examiner Kolb: You were talking to the back of the room on the last part of the question. Will the reporter read it?

Mr. Thompson: I will withdraw the question and make it more specific.

Hearing Examiner Kolb: All right.

By Mr. Thompson:

Q. Do I understand that the gross commissions 2667 received in your district annually from the Firestone plan are in the order of one-quarter of one percent of your petroleum products revenues?

Mr. Kelaher: Objection. If there was ever a leading question, that is it.

Hearing Examiner Kolb: Has this witness testified to anything that would permit that question?

Mr. Thompson: This witness has testified, sir, that his gross sales of petroleum products in his district are \$8,000,000 annually. He has also testified that his gross commissions from the Firestone plan are \$20,000 annually. I pride myself, sir, on being an excellent mathematician, and I just computed the percentage and came out with one-quarter of one percent.

Mr. Kelaher: I think he should develop these figures in a proper way. We are getting a lot of leading testimony and I am not objecting to most of it. But I think we are going to have to call a halt pretty soon.

Hearing Examiner Kolb: You have the figures; the percentage is just a matter of computation.

Mr. Thompson: That is right.

Mr. Kelaher: I am not sure it is, not on that question. He referred to something about a quarter million dollars. I haven't heard him talk about that yet.

Mr. Thompson: A quarter million dollars? What 2668 is this?

Mr. Kelaher: What did he say before that?

Hearing Examiner Kolb: Gross sales were how much? \$8,000,000?

Mr. Thompson: \$8,000,000.

Hearing Examiner Kolb: And the TBA was \$20,000?

Mr. Thompson: TBA gross, \$20,000. One-quarter of one percent.

Hearing Examiner Kolb: All right.

Mr. Thompson: I will take another line, Mr. Kelaher, and you can indulge in mathematics on cross-examination if you want to.

By Mr. Thompson:

Q. Mr. Hathaway, as district manager of Atlantic in this Baltimore district, which is more important to you: gross dollars received as commissions from Firestone or the intangible advantage to Atlantic of having a Firestone TBA line?

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: Overruled.

A. I think the fact that we drew \$8,000,000 worth of petroleum business certainly is much more important to me than \$20,000 in commissions.

By Mr. Thompson:

Q. That wasn't my question. Which is more important: the dollar commissions you receive from Firestone, or the intangible advantage to Atlantic of having the Firestone plan for your dealers? That is my specific question.

A. The intangible advantage to having a Firestone program is much more important to me.

Q. Does Atlantic have direct expenses in promoting the Firestone TBA line in your district?

A. Oh, yes.

Q. The company has on its staff a full-time TBA coordinator?

A. They have on the regional staff a full-time coordinator of TBA. They also have one in the headquarters staff in Philadelphia. And I am sure he has a group working for him.

Q. Let's take the regional TBA coordinator first. Is my recollection correct that at one time he worked under your direct supervision?

A. Yes, that is correct.

Q. Does the regional TBA coordinator visit your district now that you are a district manager?

A. Yes, he would visit my district probably once a month.

Q. For how long on each trip on the average?

A. He would stay anywhere from two or three days to the whole week.

Q. Are there regional staff groups which concern themselves with Firestone TBA in your district?

A. I am sure that the regional manager is concerned with TBA, and the sales manager is concerned with TBA, and the direct marketing manager is concerned with TBA. And of course the coordinator is very definitely concerned with TBA.

Q. Which of the Atlantic employees in your district paid out of your expense budget have as a part of their job the promotion of Firestone products, or the assistance of Firestone? Do you understand that question or shall I make it more specific?

A. I believe I understand the question. It is part of my

job to promote Firestone TBA. It is part of my sales supervisor's job; it is part of every promotable salesman's job; it is part of every general salesman's job; it is part of the distributor salesman's job.

Q. Reverting to your prior testimony when you said that you have in your district one district manager, one sales supervisor, four promotable dealer salesmen, four service salesmen, five general salesmen, and one distributor salesman, that would make 16 Atlantic employees compensated out of your half-million dollars annual expense budget—

A. Right.

Q. —who have direct responsibilities with respect to the promotion of Firestone TBA. Is that correct?

A. That is correct, yes, sir.

Q. Have you considered and are you able to estimate the percentage of time spent by your salesmen in the 2671 promotion of Firestone TBA?

A. Yes. Our figures indicate that the average salesman in our district spends between ten and twenty percent of his time in actually promoting Firestone TBA.

Q. I was referring a moment ago to expense incurred by Atlantic in assisting Firestone. Is extra compensation paid to your salesmen on Firestone orders from their accounts?

A. Extra compensation is paid an Atlantic promotable dealer salesman and general salesman for TBA that they sell over and above a certain quota.

Q. By the word "quota" what do you mean? What is a quota in the sense that you have used it?

A. It is how much they sold last year versus this year, actually. Last year's sales would be the base.

Q. In other words, it is a sales objective which you ask them to try to meet?

A. Yes.

Q. Would that be a correct interpretation of what you are talking about?

A. Yes.

Q. Do your service salesmen actually help dealers in the operation of their stations?

A. In that they train the dealers and train the dealer's employees in the operations, yes.

Q. Do you have what are sometimes called clinics for dealers?

2672 A. Yes, we have them all the time, for both dealers and employees.

Q. What is a clinic in the business of marketing petroleum products at retail through service stations? What does the word mean?

A. Well, a clinic is a short training course which may take place for a day in the service station of a dealer, or it might be that the dealers or the dealer's employees all go to one station in a given area, and there they spend a day in being taught and trained on various things, such as possibly driveway service, possibly selling tires or selling batteries or servicing them or putting on oil filters or something of that order.

Q. Do you also have dealer meetings occasionally in your district?

A. We have dealer meetings, oh, yes. Atlantic has them.

Q. About how many times a year would you have a dealer meeting in a given area?

A. Our salesmen can have dealer meetings, they can have them maybe half a dozen times a year. It depends on the salesmen and the amount of times he wants to get his dealers together to have a meeting.

Q. This in-station training provided by your service salesmen, your dealer clinics and your dealer meetings, involve expense to Atlantic, do they not?



2673 A. Oh, yes. It is a direct expense.

Q: To what if any expense do those three things to which I have referred—that is, the in-station training the dealer clinics, and the dealer meetings—aid the promotion of Firestone products?

A. In the in-station training we are trying to sell Firestone products if the dealer has Firestone products, or any other TBA products he might have.

When we are having a clinic we are trying to help him learn more about batteries and that sort of thing, or tires or how to sell them.

At dealer meetings we occasionally talk about subjects, the salesman does, that may be new to the business, new to TBA industry itself that a dealer should know about and should know something so that he can properly handle them when they come into his station.

Mr. Kelaher: I am not sure that is responsive to the question. I think the question was limited to how it aids Firestone TBA. I am not sure he understood it. I heard Firestone once in his answer. He is referring to other TBA; too.

Mr. Thompson: Is there a motion?

Hearing Examiner Kolb: Is there a motion to strike?

Mr. Kelaher: I will let the answer stand.

Mr. Thompson: Mr. Examiner; I see that the 2674 time is 4:25. I am not possibly going to be able to complete this examination tonight. I have, however, a suggestion I would like to make, very largely in the interest of assisting my friend, Mr. Kelaher. I could lead into it perhaps this way:

By Mr. Thompson:

Q. Mr. Hathaway, did you come to my office in Philadelphia several weeks ago?

A. Yes, I did.

Q. Did we have a discussion about what the Atlantic salesmen in your district do to promote Firestone TBA?

A. Yes.

Q. Did you give me a great deal of information on that subject?

A. Yes, sir.

Q. During the course of the conversation did I make notes and did we then jointly prepare an outline of the subject matter which we had discussed?

A. We did.

Mr. Thompson: If your Honor please, in the morning, when we resume, I think it would save you, sir, and all of us, a lot of time if I were permitted to ask Mr. Hathaway just one question on this subject, and that is this: What do the Atlantic salesmen do to promote Firestone TBA?

If he were permitted then to refresh his recollection by the use of the outline which he and I jointly prepared.

2675 I am bringing that subject up at this time because

I would be charmed and delighted to give Mr. Kelaher a copy of it to study overnight, if he wants it.

Mr. Kelaher: I would be charmed to take a copy of it if it is understood that there is no commitment being made as to my decision in the morning as to whether or not I will object or not.

Mr. Thompson: Then you can't have it. That is easy.

We will proceed in a leisurely manner, Mr. Kelaher—

Mr. Kelaher: How can you expect me to accept something I have never seen?

Mr. Thompson: May we go off the record for a second?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Thompson: Mr. Kelaher, I am not asking you to accept anything. I am simply suggesting that it would expedite this proceeding if this witness were permitted,

in answer to a question, to refresh his recollection by using notes which were in effect prepared by him. Have you any objection to that procedure?

Mr. Kelaher: I may have, because as I understand the rule of evidence—without making a check on it right 2676 now—you can use a document to refresh a witness' recollection with respect to the particular subject he is testifying to. Your question was, "What do Atlantic salesmen do to promote Firestone TBA?" What he said to you is of little or no importance, and whether or not you give him a memorandum to recollect what he told you seems to me to be carrying the rule of evidence pretty far.

I am not prepared to make any statement one way or the other at this time.

Mr. Thompson: Mr. Kelaher, you have just wholly missed the point. This man can testify from his memorandum, which includes a lot of topics which he wants to discuss, or I can ask him the questions. We will play it either way you like.

Mr. Kelaher: Let's ask the questions.

Mr. Thompson: That seems to me fine.

May we adjourn for the day, sir, and take it up at 10:00 o'clock in the morning?

2678 By Mr. Thompson:

Q. Mr. Hathaway, during your testimony yesterday you referred to some sixteen sales personnel in your district who did something or other with respect to the promotion by the Atlantic Refining Company of Firestone TBA. Do you recall that testimony?

A. Yes, sir, I do.

Q. Is it a part of their responsibility to point out to dealers what they deem to be the advantages of the Firestone TBA line?

A. Yes. It is a good part of their responsibility to point out the various advantages in Firestone, such as the fact that—

Q. May I interrupt you for a second? By “advantages” do you mean advantages to Atlantic or advantages to the dealers?

A. I am talking about advantages to the dealer.

Q. Thank you. I am sorry to have interrupted you.

2679 A. He may point out to the dealer the various advantages, such as the fact that Firestone is a nationally advertised brand, that it has a great consumer acceptance, that the consumer actually in many cases demands Firestone, making it very easy to sell. Firestone's quality is excellent, which means that there is very little complaint from a defect or inferior merchandise standpoint. The delivery points are kept to a minimum because they have supply points which are adequate to handle cities such as Baltimore. The prices are competitive.

Q. Is that in general the summary of the Firestone advantages to the dealers which your sales personnel are expected to suggest?

A. Yes. They are some of the advantages that our people would point out.

Q. In your district on what specific occasions are these matters pointed out to dealers or prospective dealers?

A. Well, they are pointed out in the very beginning at the interview that the salesman would have with a prospective dealer applicant. Then of course they are pointed out again when the sales supervisor and the salesman together interview the applicant, and when I interview the applicant with the supervisor and the salesman of course I will point out these advantages, too.

Q. I think you testified yesterday that in all three  
2680 of those interviews with Atlantic “no forcing” policy was also explained.

A. Oh, yes, sir.

Q. Have your salesmen any responsibilities or duties, or do they make any effort with respect to the actual taking of orders from dealers for Firestone TBA?

A. Yes, our salesmen take a good many orders from their dealers. Of course, as they go into a station to call on a dealer they would check his stock. They use a minimum inventory stock list which they would check and use to make fill-in orders to see that the dealer had a minimum stock of the items that he wanted to carry.

Q. By "he" who do you mean?

A. The dealer. They would phone in orders that a dealer would give the salesman as he called on them.

Q. When you say "phone in", phone in to whom?

A. They would phone the order that the dealer would give our Atlantic salesman to the Firestone store for filling and delivery.

Q. Are there in the course of the year a substantial number of orders thus placed by telephone by your salesmen?

A. Yes. Our salesmen I think constantly make telephone orders to the Firestone stores.

Q. Are those telephone calls made frequently or usually on pay telephones?

2681 A. Yes. Almost all dealer stations have a pay phone in them, and of course that is the phone that our salesman would be using.

Q. Do the salesmen include the cost of such telephone calls on their expense accounts?

A. Yes, sir, they do.

Q. And do those expense accounts go across your desk for your approval?

A. Yes, sir, they do.

Q. So that you know from such expense accounts that such telephone calls are made in substantial number?

A. Yes. I have questioned some of them and found from the salesman that they do make a substantial number of calls for the dealer or on the dealer's behalf to the Firestone store in calling in orders.

Q. You referred a moment ago, Mr. Hathaway, to the ability of your salesmen to check the stock of a dealer. By "checking stock" do you mean observing from the TBA on display what is or what is not there?

A. Well, they would check his stock to see what items he had that he may be selling, and when they get down to a certain level the dealer has agreed that at that level he would like to have his stock replenished. The dealer-salesman or the promotable salesman then would take note of what was needed in the station, discuss it with the 2682 dealer, and then if the dealer wanted to order it he would either call the order to the Firestone store or take it to the Firestone store to get the order filled.

Q. That same opportunity or privilege is equally available to any salesman for any company who comes in and looks at the dealer's stock?

A. Yes, I believe many competitive salesmen do just about the same thing. It is good salesmanship.

Q. Do your salesmen ever call on Atlantic dealer accounts in company with Firestone salesmen?

A. Yes. That is a regular procedure. The Firestone salesman and our salesman double-team in calling on Atlantic accounts. It is good, I think, for our salesman as well as for our dealers. They get first-hand information of the different products that are available and learn how they are used and installed and learn of new products that may be available and just what makes them saleable, how you would promote them and sell them.

Q. Do your salesmen on their calls use their own automobiles?

A. Yes, they do.



Q. Does Atlantic give them some kind of a mileage allowance for the use of their cars on business?

A. Yes. They have a flat allowance, a monthly allowance. They are also paid  $3\frac{1}{2}$  cents a mile for mileage that they do on company business. We also pay them or 2683 provide for them a liability and property insurance policy.

Q. To what extent in the use of the automobiles to which you have referred do salesmen go to the Firestone stores for the dealers to actually pick up fill-in orders for them? Is that a common occurrence or does it rarely happen?

A. I would term it as a frequent occurrence.

2684 Q. What, if any, service do your Atlantic people render to Firestone in connection with their own service and deliveries to your dealers?

A. Of course our salesmen will discuss with Firestone a better delivery schedule to more adequately serve and give quicker service to the Atlantic stations. They try to eliminate dealer complaints which may occur because the dealers don't get service as quickly as they think they should. So that it becomes a part of our salesman's job to talk to the Firestone manager of the store if he is the one who is scheduling the deliveries, to try and speed up deliveries, make them more efficient, give better service, in other words, to our dealers.

Q. Mr. Hathaway, do you find that in the selection by your dealers of the items of TBA they carry that they require assistance or advice with respect to salability?

A. Yes. A lot of inexperienced dealers, in particular, are apt to buy things that they just aren't able to sell, or certainly are slow moving items, and they might have a good bit of their money tied up in such stock. So that our salesman would advise them on items that they know through their own experience are items that will move fast,

that the dealer will make money on and that they won't have tied up on their shelf until they become shop-worn or just plain unsalable.

Q. Have your dealers been trained in TBA salesmanship?

2685 A. Our dealers are trained a great part by our own people. Our salesmen, our service salesmen will train them and teach them to sell TBA, as we term it, on the drive-way or in the lube bay, how to approach a customer, how to point out what the customer needs, and then how to ask the customer to buy.

Q. What, if any, service do your salesmen render to Firestone in connection with promotions of TBA items? Do they suggest promotions to dealers to cooperate with Firestone in any manner when that company is desirous to run some sort of a promotion?

A. From time to time, Firestone has promotional materials and aids which are available to your dealers. Our salesmen would know of these and would present them to the dealer and suggest that he use them, help them set up a promotion in which he would use these materials; develop some sort of ideas and schemes of promoting various items with these promotional aids that are available.

Q. Does Firestone, from time to time, bring out new TBA products?

A. Oh, yes.

Q. What, if any, assistance do your Atlantic salesmen render to Firestone on such occasions?

A. Well, I think in particular to the recent dry-charge battery that was brought out, which was new to the industry and which took some explaining to the dealer,  
2686 our salesmen got the first-hand information from Firestone and then went right into the station and explained the whole thing to our dealers, what it was made

up of, how it was made, how you added the electrolyte to charge it, installed it.

And the same thing on these tubeless tires, when they came out of course they were a new item. There were different methods used to install them on a wheel. You had to take them off the rim a little differently. All of that stuff had to be taught our dealers in order that they could handle and service these things properly.

Q. What, if any, advertising assistance does Atlantic render to Firestone in your district?

A. I am not sure I understand your question.

Q. Do you in your district, Mr. Hathaway, have any kind of cooperative advertising program or plan with the Firestone Company?

A. Our dealers have a cooperative advertising plan with Firestone.

Q. But Atlantic and Firestone do not?

A. We would cooperate with the dealer. As far as cooperating with Firestone, if that is your question, I am sorry I just don't know of it.

Q. Do the dealers, from time to time, make arrangements with Firestone for the advertising of Firestone products?

A. Yes. Firestone has a regular cooperative advertising program which is available to dealers.

Q. And under that program do dealers perhaps push their own ads in newspapers and that kind of thing?

A. Yes. They will place their own ad in a newspaper or they might use a flyer handout, or they could use radio.

Q. Do you know whether your dealer salesmen do or do not help the service station operators in connection with such ads?

A. Yes, they do. They help them quite often, whenever the dealer feels the need of using Firestone's cooperative advertising, which is a good item and one that they should

use to help their own business; our salesmen will pitch right in and help the dealer set up the ad, suggest copy, line it up with the newspaper, go to the radio station either with the dealer or alone and set the thing up in any way that they can help the dealer.

Q. Does the Firestone Company, from time to time, have dealer meetings in your district?

A. Yes, they do. They have them quite often.

Mr. Kelaher: Did you ask about Firestone?

Mr. Thompson: Yes.

By Mr. Thompson:

Q. Do your salesmen sometimes themselves attend those meetings?

A. Yes. Every time they have a meeting, I would 2688 say, our salesmen almost always attend.

Q. Do they or do they not sometimes try to pick up dealers and take them along?

A. That is a regular practice. Our salesmen would pick up their dealers and drive them down to the meeting. Usually a bunch of the dealers in the salesman's territory will all go together and the salesman is normally the chauffeur.

Q. Do you have in your district what is sometimes called a service station clinic in which Firestone participates with Atlantic?

A. Yes. If there is a new item, or it might be a better explanation of old items, Firestone will join with our sales people in a service station and try and teach on the spot the difference in the new product or different ways of selling some of the older and established products.

Q. You have testified, Mr. Hathaway, that your annual commission under the Firestone sales plan runs around \$20,000 a year. Is my recollection correct?

A. Approximately, yes, sir.

Q. Based upon your experience in preparing expense budgets for sales operations, if Atlantic did not perform the services to Firestone which you have described, in your opinion would it cost Firestone more or less than \$20,000 a year to supply the same sales services to your dealers?

Mr. Kelaheer: Objection, your Honor.

2689 Hearing Examiner Kolb: The objection will be overruled.

Mr. Kelaheer: He is asking, as I understand it, what the cost would be to Firestone, not to Atlantic, you understand.

Mr. Thompson: That's right. I am asking his opinion as an expert in money.

Mr. Kelaheer: He is asking his opinion as to what the cost would be to Firestone if the services weren't being performed. How would he be in a position to know that?

Hearing Examiner Kolb: I have ruled on the objection.

A. In my opinion it would cost Firestone more than \$20,000 to perform the same services that our people, all of them, perform in promoting and selling.

2690 By Mr. Thompson:

Q. I want to shift to a different subject and ask you what factors are considered by you when a dealer lease comes up for renewal?

A. Well, the factors are the gallonage of the station; the appearance; in other words the housekeeping condition and the rest rooms; the service that the dealer performs to his customers; and of course his economic situation.

Q. By which you mean whether he does or doesn't pay his bills to Atlantic?

A. That is right, whether he does or doesn't pay his bills.

Mr. Kelaheer: What was the first two that he gave?

(The reporter read the answer.)

By Mr. Thompson:

Q. Upon such occasions when leases come up for renewals, do you or do you not consider as a factor what brand of TBA the dealer is selling?

A. No, sir, it has nothing to do with lease renewal.

Mr. Thompson: May I have a moment to make a reference to the record? I have a specific question I want to ask Mr. Hathaway.

By Mr. Thompson:

Q. Mr. Hathaway, while my associate, Mr. Freed, is looking up a specific reference for me, I would like to ask you another question.

Have you, in your experience with Atlantic as a 2691 district manager, ever cancelled any dealer's lease because he didn't buy sponsored TBA?

A. No, sir.

Q. Have you ever refused to renew a lease for TBA reasons?

A. Never, sir.

Q. Mr. Hathaway, have you ever heard of a man named Eugene Savage, who is a salesman for the Burke-Savage Company in Baltimore?

A. Only in connection with these hearings.

Q. During the course of his testimony, and on cross-examination, at transcript reference 1822, Mr. Savage said, volunteering this information: "I just thought of another Atlantic station which I sold tires to."

And I said, "Good, good. Which one?"

And he replied, "It was Jerry's Atlantic. Then it turned into Joe's Atlantic. And then he got thrown out."

And I said, "For buying your tires?"

And Mr. Savage said, "He definitely told me he got thrown out for buying other people's products, besides the products coming from the oil companies."



Then that station was identified by Mr. Savage as Joe's Atlantic on Eastern Avenue.

Can you, from that information, identify that station and the former proprietor?

A. The only Joe's Atlantic on Eastern Avenue 2692 would have been Joe Hackett, at Eastern and Marlyn.

Q. Is that the station which at one time was operated by somebody called Jerry Brenner?

A. Yes, sir, that is it.

Q. Was Joe Hackett a former lessee of Atlantic Refining Company at the station to which you referred?

A. Yes, he was.

Q. Were you the district manager at the time he left that station?

A. Yes, sir.

Q. Do you know the circumstances of him leaving the station?

A. Yes, sir.

Mr. Kelaher: Mr. Examiner, I wonder if we can have some specificity with respect to dates?

By Mr. Thompson:

Q. Do you recall approximately—

Mr. Kelaher: I object unless we have more specific dates.

Mr. Thompson: You don't even let me finish a question, Mr. Kelaher.

Mr. Kelaher: I think I probably listened to your objections quite a while.

He has been a manager for a few years. I think we should have some dates.

Mr. Thompson: There was a question under way at 2693 the time when I was most recently interrupted by Mr.

Kelaher. How did it start, Mr. Reporter?

(The reporter read the question.)

By Mr. Thompson:

Q. Do you recall approximately—Mr. Kelaheer, my next words would have been—the date when Mr. Hackett departed from this station? I don't mean the specific day. I mean the year.

A. I believe it was 1956.

Q. Or thereabouts?

A. Or thereabouts.

Q. Do you recall the circumstances of Mr. Hackett's departure?

A. Yes, I believe I do.

Q. Would you state them, please?

A. Mr. Hackett, to put it very simply, went broke, asked to be replaced, which we did.

Q. Did he or you initiate the termination of his lease?

A. Mr. Hackett initiated.

Q. Do you know Mr. Varnadore, who testified in this proceeding last Monday in Baltimore?

A. I know him very well.

Q. During the course of Mr. Kelaheer's cross-examination of Mr. Varnadore he asked him questions about a new form of lease signed by Mr. Varnadore quite recently.

2694 May I ask, first, whether you recall the approximate date of Mr. Varnadore's new lease?

A. Yes.

Q. When it became effective?

A. Yes, I know when it became effective.

Q. When?

A. June 1st, this year.

Q. What were the circumstances leading up to the change in form of the Varnadore lease?

A. Mr. Wyniger, who is Mr. Varnadore's partner, called me on the telephone and asked if he could come in and talk to me, which he did, and requested that we

cancel their present lease, which was a gallonage lease, and gave them a new percentage lease.

Q. Would you briefly explain the difference between the gallonage lease and the new percentage lease?

A. The gallonage lease was based on the gallons, a certain number of cent per gallon, the gallonage volume that a station did during a month, with a minimum, and in many cases with a maximum.

The percentage lease is based on the business that a station does in gross sales volume. We have certain percentages against the various—I hope I am saying this so that you understand it—we base our lease rental on percentages of the gross sales volume, with a decreasing  
2695 percentage which runs from six percent decreasing to three percent.

Q. And starting with what?

A. It starts at the—the first five hundred dollars of gross sales has no rental.

2696 Q. I think it is not necessary for you to continue because this information has already been placed off record by stipulation, Mr. Hathaway.

Would you go on, please, sir, with what happened next about the Wyniger and Varnadore leases. Did Mr. Wyniger come to see you?

A. Mr. Wyniger came to see me and explained that they would like to have the new percentage lease, because their accountant, who also happened to be the accountant for several other Atlantic stations, had figures for them that they would save approximately \$90 per month if they were put on the percentage lease.

We mutually cancelled their present lease and put them on the percentage lease effective June 1.

Q. Has that percentage lease been accepted by a number of your other lessee dealers in the Baltimore area?

A. Yes. Of course it is accepted by every dealer whose

lease expires. In several cases, dealers like Mr. Wyniger and Mr. Varnadore have requested the new percentage lease and it has been given them.

Q. Have you made for your district your own personal survey of the impact or effect of the percentage lease against the prior form of gallonage lease and determined whether your lessee dealers are paying more or less rent to Atlantic under the new form of lease?

2697 A. All of our dealers, with the exception of one to date, are paying less rent under the new percentage lease than they paid on the gallonage lease.

Q. Have your dealers commented to you whether they like or dislike the new form of lease?

A. Our dealers, without—let's say, with one exception—have commented that they are very, very much in favor of our new percentage lease.

Q. Mr. Hathaway, I inadvertently omitted one question which I had intended to ask you yesterday.

When one of your leases is, for some reason or other, terminated and a new lessee dealer comes in to take his place, do you have what is sometimes referred to as a check-out?

A. Yes.

Q. What is Atlantic's policy with respect to the advice which you give the incoming dealer on his purchase or refusal to purchase the out-going dealer's TBA?

A. Our advice to the incoming dealer is that he purchase any TBA item which he considers salable from the out-going dealer.

Q. Is that true regardless of brand?

A. Regardless of brand; yes, sir.

Q. And whether or not the out-going dealer has or has not purchased the TBA items from Firestone?

2698 A. That has nothing to do with it. We like the change-over to be as nice and as friendly as possible,

so that the incoming dealer can retain some of the outgoing dealer's customers, if possible. And if we get into an argument during the change-over, it doesn't help either party.

Q. Do you know Tommy Eckhardt?

A. Yes, sir. Very well.

Q. Were you present in Baltimore, sitting at the council table with me, during his testimony late Tuesday afternoon, in Baltimore?

A. Yes, sir.

Q. Have you ever heard of Jack's Tire Store?

A. In Baltimore? Yes, sir.

Q. That store sells Firestone products, does it not?

A. Yes, sir.

Q. Do you recall Mr. Eckhardt's testimony that up until the time he left Atlantic in 1955 he purchased Firestone TBA from Jack's Tire Store?

A. Yes, sir.

Q. Jack's Tire Store, or whatever the correct name is—Mr. Ballard's recollection is that Mr. Eckhardt described it as "Jack's Tire Service."

Do you happen to have the testimony here, Mr. Kelaher?

Mr. Kaleher: I have it in my room.

I believe it is Jack's Tire Service.

2699 By Mr. Thompson:

Q. May I rephrase my question, Mr. Hathaway.

Mr. Kelaher's records and Mr. Ballard's memory indicate that the name used by Tommy Eckhardt was "Jack's Tire Service" and not "Jack's Tire Store", to which I referred awhile ago.

But whichever it was, during the time Mr. Eckhardt was a lessee, was that—Jack's establishment—one of the Firestone outlets, purchases from which entitled the Atlantic Refining Company to a commission under the Firestone plan?

A. No, sir; it was not.

Q. Does it therefore follow that the Atlantic Refining Company received no commission whatever upon any of the purchases by Tommy Eckhardt from Jack's Tire Service?

A. We received no commissions whatsoever.

Q. On Tommy Eckhardt's Firestone purchases?

A. On Tommy Eckhardt's Firestone purchases from Jack's Tire Service.

Mr. Thompson: Mr. Hathaway, thank you very much. These are all the questions that I have on direct. I would suppose Mr. Kelaher would want to take a little time before he starts cross-examination.

Or do you want to go right ahead?

Mr. Kelaher: I will go right ahead. I might say that I knew Mr. Hathaway was coming, but I didn't know 2700 the scope of his examination. So I would like to proceed for awhile and then have an opportunity to refresh myself on what he testified this morning, and then continue with the examination, if that is all right.

Hearing Examiner Kolb: We will recess now.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

*Cross-Examination by Mr. Kelaher.*

Q. Mr. Hathaway, I believe you were present at the hearings in this matter, Docket 6486, that were held in Baltimore, isn't that correct; at the hearings held in 1957 and those held in 1958?

A. Yes.

Q. Did you attend any other hearings in this matter in other areas?

A. No, sir.



Q. And have you read the complaint in this matter, the complaint in Docket 6486 directed against the Atlantic Refining Company?

A. No, I haven't read it.

Q. When you became Baltimore District Manager in April, 1954, you knew that the Federal Trade Commission had attorneys in the Baltimore district in connection 2701 with Atlantic's sponsorship of Firestone TBA; isn't that correct?

A. No, it is not.

Q. Did you learn soon after that that the FTC attorneys were in the Baltimore area?

A. No. I didn't know anything about that until just before these hearings started.

Q. At the Baltimore hearings that were held this week, on Monday and Tuesday, signed statements were produced which were in the files of the Atlantic Refining Company taken from Atlantic dealers as far back as March, 1953.

Do you say now that you don't know that the Federal Trade Commission was conducting an investigation into the Firestone TBA at that time?

Mr. Thompson: He didn't say that.

That is a distortion. All he said was that he didn't know they were doing it in Baltimore. He didn't say he didn't know they were doing it elsewhere.

Mr. Kelaher: Let's have the question read.

(Question read.)

A. I did not know until a good while after I had come to Baltimore that there were any such statements taken.

By Mr. Kelaher:

Q. In view of your answers I am going to ask you this question: You have been with Atlantic since 1939 in one capacity or another, haven't you?

2702 A. That is correct.

Q. Didn't you know before you arrived in Baltimore that the Federal Trade Commission was investigating Atlantic's tie-up with both the Goodyear Tire and Rubber Company and with the Firestone Tire and Rubber Company on TBA?

A. I may have heard it, Mr. Kelaher, but I don't recall it, no.

Q. Isn't it a matter that would be discussed among Atlantic personnel?

A. No particularly.

Q. And were you aware that a complaint issued against Atlantic Refining Company in January, 1956, charging them with violations of Section 5 of the Federal Trade Commission Act because of their tie-ins with Goodyear and Firestone on TBA?

A. I imagine I heard it but certainly I cannot pinpoint the date or anything like that.

Q. You certainly have been aware of this. It is very difficult for me to sit here and believe that you haven't heard of this investigation or proceeding at some time during your career with Atlantic Refining Company.

A. I have been very much aware of it in the last year.

Q. And prior to that you knew about it, isn't that correct?

A. Possibly, but I didn't give it too much thought.

Q. Yesterday you testified with respect to the 2703 number of gasoline retailers in the Baltimore district, as you will recall.

A. Yes.

Q. I would like to ask you some questions about those figures, mainly for the purpose of clarification.

You stated that in the Baltimore district there were, as I understood your testimony, 2200 or 2300 gasoline retail outlets. Is that correct?

A. Yes, I said that.

Q. In the first place, would you define what you call a gasoline retail outlet?

A. It is a place that sells gasoline at retail.

Q. Could you give us any further description than that? What type of a place, for example?

A. It could be a service station, it could be a grocery store, it could be a garage, it could be a new car dealer.

Q. So it would include various types of retail outlets.

Breaking that figure down, as I understood your testimony, there were approximately 1000—you testified there were approximately 1200 or 1300 service stations; is that correct, in the Baltimore district?

A. Approximately, yes.

Q. And of that number approximately 1000 were described by you as real service stations. What is your distinction between that 1000 and the remaining 200, 2704 or 300 service stations?

Mr. Thompson: I don't recall that testimony, Mr. Kelaher. I think, sir, your note is in error.

By Mr. Kelaher:

Q. Didn't you refer to certain service stations as real service stations?

A. That's right.

Mr. Kelaher: He testified to that. He just stated it.

Mr. Thompson: My notes—may I tell what my notes recall?

Mr. Kelaher: I will bring it out from the witness.

Mr. Thompson: You are confused between the metropolitan Baltimore area and the Baltimore district, which are two different geographical locations.

Mr. Kelaher: I am aware of that.

Mr. Thompson: I tried to keep that clear on the record. Maybe I didn't.

Mr. Kelaher: I am aware of that.

By Mr. Kelaher:

Q. With respect to your 2200 or 2300 retail outlet figure, which did that relate to, the Baltimore district or the metropolitan area?

A. That would be the district.

Q. What did your 1200 or 1300 figure relate to?  
2705 You stated there were 1200 or 1300 service stations, as I recall.

A. Didn't I say 1200 to 1300 retail outlets in metropolitan Baltimore?

Q. In the metropolitan Baltimore area.

Of that number you broke that down, as I understand your testimony, and stated that of that number there are approximately 1000 which you designated real service stations; is that correct?

A. In the metropolitan Baltimore area?

Q. Yes, in the metropolitan Baltimore area.

A. Yes.

Q. What is your definition of a "real" service station?

A. It is a service station that can dispense gasoline, has lubrication facilities, washing facilities, can handle TBA, installation of TBA, and do many of the services that an automobile customer expects or can have done to his automobile.

Q. And such a class of service station would be potential TBA outlets, would they not?

A. Yes, sir.

Q. That leaves, in that category, 200 or 300 stations which you did not define. But I would like to ask you to state a little more definitely what would be in that group.

A. That would be the retail outlet that was not a real service station, such as a grocery store, possibly a garage, a car dealer.

2706 Q. Would they be what are sometimes referred to as "filling stations" as distinguished from a service station?

A. No. I wouldn't refer to them as filling stations.

Q. Would these be potential TBA outlets?

A. No, I wouldn't think so.

Q. In the metropolitan Baltimore area, are the bulk of those stations, you have referred to, lessee stations?

A. I would assume they are lessee, for the most part.

Q. Referring again to the metropolitan Baltimore area, you stated that your Company, Atlantic, is in competition with a number of other major oil companies; is that correct?

A. That is correct.

Q. And you stated about 11. Does that apply to the metropolitan Baltimore area? Are there that many major competitors?

A. Yes; it would apply to metropolitan Baltimore.

Q. And who are your principal competitors in metropolitan Baltimore area?

A. Esso, Amaco, Sinclair, Sun, Texaco, Shell, Crown, Socony.

Q. Do you consider Crown a major or an independent?

A. I consider it a major in metropolitan Baltimore.

Q. But it is not a national company, is it, or do you know?

A. They certainly market in other places besides Baltimore.

Q. Go ahead.

2707 A. Tydol, Calso.

Q. And in addition, you have some independents, or did you name them all?

A. Oh, no; there are a number of independents.

Q. In view of your last answer, to the effect that you have these major competitors and independents, it would

appear that Atlantic shares as substantial a share of the market as any of the other companies; is that pretty much so?

A. I don't—I am not quite sure I understand what you mean by a “share”.

Q. You say you have 1200 or 1300 stations in metropolitan Baltimore area. They are divided among Atlantic and these other companies apparently?

A. Yes.

Q. How would Atlantic rank insofar as the number of service stations is concerned?

A. Some companies would have more and others would have less.

Q. However, Atlantic is one of the principal companies in the metropolitan Baltimore area, is it not?

A. We don't have that big a share of the business.

Q. I am talking about with respect to numbers of outlet stations, service stations.

A. We don't have the least number by any means, nor do we have the most. I wouldn't know how else to answer you.

Q. That is sufficient.

2708 Q. With respect to contract stations, you stated that there were around 60 Atlantic stations. Would that be in the Baltimore district or the metropolitan Baltimore area?

A. That is in the district.

Q. And in the metropolitan Baltimore area, how many contract stations does Atlantic have?

A. In what I defined as metropolitan Baltimore we would have no more than 15.

Q. No more than 15. And are any of those so-called real service stations?

A. I would class two of them as real service stations.

Q. They would be potential TBA outlets?



A. Yes.

Q. And the others would not; is that correct?

A. Yes.

Q. And when you stated on direct, that five or six in the Baltimore district of the 60 contract dealers were real service stations, that would indicate that the five or six were potential TBA outlets and the remainder were not; is that correct?

A. They are real service stations.

Q. And they are potential TBA outlets?

A. Yes, sir.

Q. And the remainder would not be potential TBA outlets; is that correct?

2709 A. That is correct.

Q. In connection with the figures which you have given, are they current figures or as of what period are you talking about? With reference to all these numbers that we have been discussing here.

A. They would be first quarter 1958 figures.

Q. First-quarter of 1958?

A. Yes.

Q. And you have reviewed published sources to obtain this information; is that correct?

A. Yes, sir.

Q. You made a reference to the fact that there have been 100 new service stations which have opened in the metropolitan Baltimore area?

A. Yes.

Q. During a particular period. What period was that?

A. 1957 and 1958, up to June.

Q. That would be a period of a year and a half?

A. Approximately a year and a half.

Q. Of that number, how many were new Atlantic service stations?

A. Approximately six.

Q. Approximately six during that same period?

A. Yes.

Q. I am going to call your attention to some 2710 ratios that were developed yesterday, which I have studied with great interest. As District Manager for the Baltimore district, you of course have occasion to examine operating statements, do you not, to show profits and losses of one type or another?

A. No, I don't have any profit statements.

Q. Do you have any accounting background at all?

A. None whatsoever.

Q. Are you familiar with the difference between gross income and net income, or between profit and loss?

A. Without an accounting background I think I know the difference between profit and loss, yes.

Q. That is fine, because I would like to ask you about some of these ratios.

In the first place, you said that the gross commissions on Firestone TBA program in the Baltimore district was approximately \$20,000; is that correct?

A. That is correct.

Q. That was for what period?

A. 1957.

Q. By some slight-of-hand that was related to a figure of \$578,000--

Mr. Thompson: I object to the aspersions on my questioning of this witness. There was no slight-of-hand at all.

2711 By Mr. Kelaher:

Q. A figure of half a million dollars was described as the expense budget. I am going to ask you a few questions about that expense budget.

What does that include?

A. It includes payroll, service station maintenance,

terminal maintenance, administrative expenses. Those would be the major.

Q. And that expense item of half a million dollars relates to the operational expense with respect to Atlantic's entire business in the Baltimore district; isn't that correct?

A. Yes.

Q. I assumed it would be.

So the half million dollars was expended in producing income from all sources, was it not?

A. Yes.

Q. The figure of \$20,000 we have established was the income from Firestone TBA in the Baltimore district; correct?

A. Yes.

Q. You have taken that as income, and from that you have deducted an expense figure of \$578,000, or over a quarter of a million dollars.

A. That is mighty deep.

Q. I am asking you what this is intended to prove.

Mr. Thompson: I object to the form of the question. The witness has done no such thing.

Mr. Kelaher: I will put it another way.

By Mr. Kelaher:

Q. The question you were asked was this: What was the relationship of \$20,000 to \$578,000, and it turned out to be about four percent. Do you remember that figure?

A. Yes.

Q. What is the significance of the 4 percent?

A. The significance is that the TBA commissions—it merely points up that this is a definite side-line with the Atlantic Refining Company.

Q. How does it point up it is a definite side-line when you are taking an expense pertaining to your entire com-

pany operations and applying it to your income from TBA only? I don't get the significance of your statement. I am just trying to show that it is not a fair comparison. Do you still think it is?

A. I think it is a good comparison.

Q. All right, we will let it stand there.

Now, I would like to ask you about another ratio which was developed on your direct examination, which also intrigues me.

You referred to a gross sales figure of \$8,000,000?

A. Yes, sir.

Q. What is included in that gross sales figure?

2713 A. That would include the gasoline, motor oil, burning oils, antifreeze, industrial lubricants, industrial chemicals, washes, anything that Atlantic sells in petroleum.

Q. That is from all sources that you could think of?

A. Yes.

Q. Mr. Thompson asked you some questions which related to \$20,000 income from TBA, from Firestone TBA commissions, to the \$8,000,000, and you came out with a very minor percent amounting to one-quarter of one percent: do you recall that figure?

A. Yes, I do.

Q. I don't know whether you realize what you have done, but I am going to take you through this a little bit.

Hearing Examiner Kolb: The quarter of one percent was Mr. Thompson's figure.

Mr. Thompson: Was I wrong?

Mr. Kelaher: His computation is accurate, but the procedure is quite intriguing.

2714 By Mr. Kelaher:

Q. What you have done here, as I understand your testimony; both on direct and now on cross, is to take a gross

sales figure of \$8,000,000 from which you have made no deductions whatsoever—and I assume you pay something for your gasoline and your other products—

A. I am sure we do.

Q. Which would be quite a sizable figure running into the millions, would it not?

A. It should be.

Q. It should be is correct. And you have taken a gross income figure of \$8,000,000, to which has been related an income figure of \$20,000 from TBA, which does not have deductions other than some which have not been so far itemized, but in effect you have taken a gross sales figure and related it to what amounts to almost a net income figure. Do you think that is a proper comparison?

Mr. Thompson: I object to the form of the question. The \$20,000 commission is not a net figure at all, and Mr. Kelaher knows it.

Mr. Kelaher: The \$20,000 figure—

Mr. Thompson: I object to your characterization of the \$20,000 as a net figure.

Hearing Examiner Kolb: I think the witness testified this morning that on that \$20,000 figure you would have to take into consideration the sales expense on the part of the salesman in promoting the sale of the TBA.

Mr. Kelaher: I mentioned that in my question. I said it was subject to certain deductions which have not as yet been itemized.

But the \$8,000,000 figure I say—I am asking if it is an unfair comparison to take a figure of \$8,000,000 before deducting the cost of gasoline, petroleum products, and numerous other expenses—in other words, the cost of manufacture, sale and delivery—and comparing that with a figure of \$20,000 which has no cost of manufacture, no cost of delivery, and just some minor selling expenses.

Mr. Thompson: That is objected to. There wasn't any testimony that these were minor selling expenses.

Mr. Kelaher: We will strike the word "minor" at this point, and we will develop that later.

By Mr. Kelaher:

Q. I am asking you, in your opinion, is that a fair comparison?

A. I think it is a fair comparison.

Q. Why?

A. Because I think again it points out the gross sales that we enjoy in Baltimore on our petroleum products versus the very small gross commission that we get from Firestone, and again simply points out the fact that 2716 we are so much more interested in the sales of our petroleum products, that our TBA is very much of a sideline.

Q. You keep saying about your gross sales of TBA being insignificant. Isn't it a fact that the sales of Firestone TBA in the Baltimore district aggregate in the neighborhood of a quarter of a million dollars a year?

A. Yes.

Q. That is correct, isn't it?

A. Yes.

Q. So when you keep referring to a \$20,000 figure, it is actually your commission, it is not a sales figure?

A. But all I am interested in from Atlantic is the gross commission.

Q. But you still, as I understand your answer, figure that this was a valid comparison?

A. Yes, sir.

Q. I will let it stand at that.

In your testimony you also referred to the fact that you have a sales supervisor and various classes of salesmen. To bring the record up to date, would you give us the name of your current supervisor?



A. Mr. E. B. Munch.

Q. And your promotable dealer salesmen, you have four promotable dealer salesmen. Would you give us their names?

A. Mr. R. D. Thomas, R. R. Goudey, and W. C. 2717 McGee, and E. H. Williams.

Q. I will show you a list appearing in the transcript at Page 419 and ask you if the service salesmen and general salesmen's names have changed since June 1957.

Would you just state? Maybe it would be easier to give us the names of the current general salesmen and the current service salesmen.

A. Gilbert Moran, W. R. Simpson III, Arthur Hendley, and Donald Hactel.

Q. And they are what?

A. They are service salesmen.

Q. And you also have three general salesmen; is that correct?

A. We have five general salesmen.

Q. On direct examination you stated that promotable dealer salesmen call on lessee dealers only; is that correct?

A. Yes.

Q. Also, on direct examination you referred to the fact that you are interested in what you refer to as a good dealer to operate your service stations.

A. I certainly am.

Q. And you also stated that the income of a good average dealer would range from \$10,000 to \$15,000, in some instances a dealer would have an income of \$25,000.

A. Yes.

Q. Isn't TBA included in that income?

2718 A. Oh, sure.

Q. And isn't it an important source of income to the dealer?

A. Yes.

Mr. Kelaher: Mr. Examiner, at this time I would like to have an opportunity to review the witness' examination earlier this morning. This may be a good time to adjourn until two o'clock.

Hearing Examiner Kolb: Do you have any other witnesses?

Mr. Thompson: Yes, sir.

Hearing Examiner Kolb: Then we can take the next witness until 12:30.

Mr. Kelaher: Adjourn until 12:30 for the next witness?

Hearing Examiner Kolb: Yes, unless there is objection.

Mr. Thompson: On that basis shall we go right ahead with the next witness now?

Hearing Examiner Kolb: Yes.

Mr. Ballard: May we have a recess before we take the next witness to figure out who it will be?

Hearing Examiner Kolb: Yes.

(Witness temporarily excused.)

(A short recess was taken.)

2719 Hearing Examiner Kolb: The hearing will come to order.

EDWARD B. MUNCH was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Ballard.*

Q. Mr. Munch, will you state your name for the reporter?

A. Edward B. Munch.

Q. And will you state your home address?

A. 202 Charmuth Road, Lutherville, Maryland.

Q. What is your present position with the Atlantic Refining Company?

A. Sales supervisor, Baltimore district.

Q. Could you briefly outline your previous positions? I believe you have a memo you made of the dates. You can use that to refresh your recollection and tell us the dates and positions that you have held.

A. I was employed on August 12, 1940, and until January 8, 1943, was tire salesman for the Atlantic Refining Company.

From January 8, 1943, to September 25, 1945, military service.

September 25, 1945, to October 20, 1947, tire salesman.

October 20, 1947, to April 20, 1950, TBA salesman.  
2720 April 20, 1950, to June 4, 1951, Richmond sales supervisor.

June 4, 1951, to December 7, 1957, sales training coordinator, Southern region.

From December 7, 1957, until now on my present assignment.

Q. Mr. Munch, referring to your tour of duty as training coordinator for the Southern region, what were your duties and responsibilities in that position?

A. To coordinate all training in the Southern region, which included the training of company personnel just coming with the company, as well as prospective dealers for service stations.

Q. Where was that training done, sir?

A. In the last several years in Charlotte, North Carolina.

Q. Is there a permanent school there?

A. The school was given a permanent location with a class room and training stations in Charlotte, North Carolina.

Q. Do Atlantic dealers who are to be trained from the various districts in the Southern region all go to that school?

A. Did you say dealers?

Q. Dealers who are to be trained, yes.

A. From Baltimore to Miami, all go to that school.

Q. When a new man is taken into the sales department of Atlantic, does he go to that school?

A. The first day of employment with the company is the day that he enrolls in the school.

Q. And the dealers and the company's sales trainees go to the same school?

A. They take the first training program together.

Q. In the same classes?

A. Same classes.

Q. Is that school a five-week program?

A. That is a five-week school.

Q. Now, sir, in that school is Atlantic's "no forcing" TBA policy presented to the students?

A. On Wednesday of the first week of the school the trainees receive the orientation on TBA where they tell the dealers and the trainees the value of selling TBA, and then explain Atlantic's TBA policies and programs to them.

Q. Did you yourself give that course in that school occasionally?

A. On quite a few occasions.

Q. And when you did that did you explain the policy to the trainees under your charge?

A. Every instructor has a script to follow, and in that it is a must that we read a letter written by Mr. Colley to all the dealers in 1951 when we went on our present TBA program, stating the reasons behind it, and also pointing out very vividly that it is theirs to accept or reject, that it is in no way compulsory.

Q. In your more recent experience in the Baltimore district, have you found that policy to be carried out in practice?

A. The policy is carried out in practice in the Baltimore district.

Q. You have salesmen under your charge in the Baltimore district, is that not a fact?

A. Yes.

Q. You are in charge of salesmen?

A. Yes.

Q. Do your salesmen explain that policy to the new Atlantic dealers as they are recruited?

A. They explain that to the prospect during the recruiting period. Then if he impresses the salesman he is brought in to my office, or I on occasions will visit the prospect at his home, where again I point out to him once the screening is complete and we have decided on the likely prospect, we take them in to Mr. Hathaway, and he again explains our program.

Q. Does his explanation include a statement of the "no forcing" policy?

A. We all use that same approach.

Q. I am not quite sure. I may have covered this point.

When you discuss it with dealer recruits, do you explain the policy to them?

A. Yes.

Q. And you see that your salesmen do?

A. Oh, definitely.

Mr. Ballard: I have no further questions of Mr. Munch. Doubtless Mr. Kelaher will have a few.

*Cross-Examination by Mr. Kelaher.*

Q. Mr. Munch, I listened to your direct examination and your direct testimony, and I haven't heard either counsel or you make reference to the brand of TBA which you sponsor in your region. I think the record probably should show that. You were the sales training supervisor, is that right?

A. Coordinator.

Q. Of the Southern region?

A. That is right.

Q. Now would you tell us what brand of TBA you were referring to during your testimony?

A. As I said, we first impressed the trainees with the value of selling TBA, and did try to sell them Firestone.

Q. You didn't assume your present assignment as sales supervisor in the Baltimore district until September 2, 1957, is that correct?

A. No. December 4, 1957.

Q. December 4, 1957?

2724 A. That is right.

Q. And your assignment began as sales supervisor in the Baltimore district at that time?

A. It is still the same thing.

Mr. Kelaher: No further questions.

Mr. Ballard: I have no further questions.

(Witness excused.)

Hearing Examiner Kolb: We will adjourn until two o'clock.

(Thereupon, at 12:15 p.m., the hearing was recessed, to reconvene at 2:00 p.m., this day.)



2725

Afternoon Session.

2:00 p.m.

Hearing Examiner Kolb: The hearing will come to order.

You may proceed.

Mr. Kelaher: May we recall Mr. Hathaway to the stand, please?

HOLLAND M. HATHAWAY resumed the stand and, having been previously duly sworn, testified as follows:

*Cross-Examination (resumed) by Mr. Kelaher:*

Q. Mr. Hathaway, how do your service salesmen promote Firestone TBA, if at all?

A. I don't think my service salesmen have much to do with promoting Firestone TBA except as they may work under the direction of a salesman in a particular location in which they happen to be working.

Q. Yesterday, and I think this may have been inadvertent, on your direct examination your attention was called to the fact that there were 16 employees who you stated had direct responsibility with respect to promoting Firestone TBA, and included in those 16 were four service salesmen.

Is that correct?

2726 A. Yes.

Q. You recall that statement?

A. Yes, sir.

Q. And you stated that the service salesmen, in fact all 16, as I understood your testimony, spent from ten to twenty percent of their time promoting Firestone TBA. Would that be true of service salesmen?

A. They would do a lot of the teaching and the training

and handling of Firestone TBA items, and teaching the dealer and the dealer's employees. Of course they are constantly teaching service, installation and that sort of thing of the Firestone TBA item. They don't take orders or that type of thing the way the salesman does. But in the installation, training, teaching and all, they would be spending a good bit of their time on that basis.

Q. However, that wouldn't be classed as promoting Firestone TBA. They are more in the nature of salesmen who teach them how to perform services of one type or another, and they may use Firestone TBA in doing that. But they are not really promoting Firestone TBA with their dealers, are they?

A. Well, they do assist the salesman in great measure, the salesman's job, in promoting the TBA. So I do think that they are in many ways promoting the sale.

Q. They are promoting the sale of TBA, but are you referring to all TBA or Firestone TBA?

2727 A. I would have to refer to both Firestone TBA and non-Firestone TBA.

Q. TBA in general?

A. TBA.

Q. So that your figure of ten to twenty percent of their time might be slightly high, or might be high, would you think, with respect to promoting Firestone TBA?

A. No, I don't think I would want to change that figure in their case.

Q. Does your same answer hold true with respect to the other twelve employees, including yourself, that you referred to yesterday with respect to that ten percent or twenty percent figure?

A. Yes, sir, I believe it would.

Q. I will come back to that in a little while. At this time I want to go into another subject.

You were asked on direct examination this morning to

state the advantages to Atlantic of an Atlantic dealer handling Firestone TBA. Do you recall that question?

A. I honestly don't quite recall it. I said so much up here.

Mr. Thompson: I think the question was asked yesterday, Mr. Kelaher. That may be the confusion.

Mr. Kelaher: No. I have it in my notes as of today.

2728 Mr. Thompson: It must be true then if you have it in your notes. A similar question was asked yesterday with respect to the training of Atlantic personnel which may have caused the confusion.

By Mr. Kelaher:

Q. One of the reasons you gave on direct examination as to why it is to Atlantic's advantage for a dealer to handle Firestone TBA is because Firestone is nationally advertised. Do you recall that?

A. Yes. I know that is an advantage.

Q. Do you recall saying that.

A. It seems to me that we were talking about what Atlantic salesmen do to promote Firestone TBA.

Q. This is another topic. We are talking about the advantages to Atlantic of Atlantic dealers handling Firestone TBA, and you gave what amounts to a five-point answer. I can refresh your recollection on it if you wish.

A. I wish you would.

Q. First, you said that Firestone is nationally advertised; second, you said that Firestone has consumer acceptance and, as I understood you, customers in some instances actually demand Firestone; Firestone quality is excellent—I am not using your exact words, but I have the substance of what you said—and the next one is that delivery points are kept to a minimum; and next, that prices are competitive on Firestone. Do you recall that testimony this morning?

A. Yes, but I don't recall it in response to the question that you are asking me.

Q. Do you think there are advantages to Atlantic of Atlantic dealers handling Firestone TBA?

A. I certainly think there are advantages to the dealer, and if there are advantages to the dealer then of course they would be advantages to Atlantic.

Q. In your opinion there are advantages to both?

A. Yes, sir.

Q. Let me ask you this: Why is it more advantageous to a dealer to handle a Firestone TBA than any other nationally advertised TBA, such as Goodyear, for example?

A. I couldn't very truthfully say that there wouldn't be advantages for a dealer handling Goodyear.

Q. Or/and other nationally advertised brand?

A. I am interested in Firestone. And because I am interested in Firestone I just think it is better.

Q. However, you stated it was an advantage to the dealer to handle Firestone—

A. I think.

Q. —TBA. Wouldn't it be just as advantageous for him to handle some other brand?

A. In our market in Baltimore Firestone seems to have the best acceptance and therefore in our opinion—2730 in my opinion it has the best advantage to the dealer.

Q. Isn't it true that Goodyear, US, Goodrich, and many other national brands are nationally advertised and sold in Baltimore?

A. Oh, yes. Everything seems to be sold in Baltimore.

Q. Isn't it true that many dealers might think that it would be to their advantage to handle one of those other brands?

A. If they do, then they are free to handle them.

Q. You state that another advantage to the dealer—of course you say they are free to handle them but in your

opinion it would be to their disadvantage to handle them; is that correct?

A. No, I wouldn't say that at all.

Q. Fine. You also state that another advantage to the dealer is that Firestone has consumer acceptance and that there are requests for Firestone. Isn't it true that other brands of tires, including Goodyear, also have consumer acceptance?

A. It certainly is.

Q. Isn't it true that customers demand other brands of tires other than Firestone?

A. I am sure they do.

Q. Isn't it true also that at one time Atlantic thought that Lee tires were better for their dealers, and Exide 2731 batteries, than any other brands; isn't that correct?

A. We used to sell them.

Q. Isn't that correct? Wasn't that the reason that Atlantic sponsored Lee-Exide, because they thought it was better for their dealers?

Mr. Thompson: If you know, Mr. Hathaway.

Mr. Kelaher: He was with the organization at the time.

A. I can't state that they thought they were better.

By Mr. Kelaher:

Q. But they thought it would be more advantageous for their Atlantic dealers to handle those products, did they not, than other products?

A. I can't tell you that.

Q. You can't answer that question?

Let's see now. You also said that it was advantageous to Atlantic dealers to handle Firestone TBA because of the quality. Isn't it true that there are other brands of tires, batteries, and accessories which also are of like grade and quality as Firestone?

A. I know the Firestone quality because I see a lot of

them, and therefore that is why I can truthfully recommend them.

Q. But you are in no position to say that there aren't other tires, batteries, or accessories which are not of 2732 equal quality, are you?

A. No, I am in no position to say that.

Q. You also made the statement yesterday, which is one of the ones that Mr. Thompson had reference to, I believe, that you thought it was advantageous to an inexperienced dealer not to have "droves of jobber salesmen calling on him." Do you recall that?

A. Yes.

Q. So in your opinion you prefer—Atlantic, rather, thinks it is to a dealer's advantage not to have jobber salesmen calling on Atlantic stations; is that correct?

A. Not to have droves of jobber salesmen calling on them.

Q. How would you limit it then? Are you in favor of having some jobber salesmen and not others?

A. I think every dealer would have some jobber salesmen calling on him, certainly. Droves of jobber salesmen calling on them certainly in my opinion is not an advantage for a dealer.

Q. But you don't deny the right of a jobber salesman to call on any businessman that he cares to, do you?

A. Not in the least. No, sir, not in the least.

Q. Then you also stated that one of the advantages to Atlantic dealers—you say "as well as to Atlantic"—for handling Firestone TBA, is because their prices are competitive. Isn't it true that Atlantic dealers can obtain the same or better prices in other brands of TBA than Firestone?

A. Not to my knowledge, no, sir.

2734 Q. Are you familiar with the price structure in the tire industry?



A. Do you mean, can I quote tire prices, Mr. Kelaher?

Q. Do you know whether or not some brands in the tire industry are generally sold at lower prices than other brands?

A. Yes, some brands would be sold at lower price. I would know that.

Q. So that there are brands, which could be obtained by Atlantic dealers at lower prices than Firestone?

A. Of lesser quality.

Q. That is debatable.

You are in no position, I take it, to pass on the quality of Firestone, are you?

Mr. Thompson: If your Honor please, Mr. Kelaher just very carefully qualified Mr. Hathaway as an expert on quality a little while ago.

Mr. Kelaher: Not on quality.

By Mr. Kelaher:

Q. This morning you will recall in connection with a question with reference to Mr. Varnadore you made reference to the new lease, the new Atlantic lease?

A. Yes, sir.

Q. That lease was—I think the printed date is July, 1956, so that Atlantic dealers who have executed leases since that time or have asked for a change have entered into that particular lease; is that correct?

A. That is correct.

Q. Under that lease Atlantic obtains a return as rental on gross receipts, exclusive of certain taxes, and so forth, from its Atlantic dealers, isn't that correct?

A. Yes, on gross sales.

Q. And that includes gross sales of TBA?

A. Yes.

Q. Isn't that true?

A. That is true.

Q. So that from a financial standpoint it doesn't make any difference whether an Atlantic dealer sells Firestone or non-Firestone TBA; Atlantic still obtains a percentage of the gross sales of that TBA; isn't that correct?

A. A percentage of the gross sales that the dealer does.

Q. So it makes no difference from the brand standpoint, as I understand your answer, what TBA is sold by the Atlantic dealer insofar as rentals are concerned?

A. It would be based on the total gross sales of the station regardless of what he sells.

Q. And in that connection do you audit the books of the dealer or review the books of the dealer in computing rentals?

A. The salesmen do.

Q. You also made reference to the fact, this morning, that your salesmen, Atlantic salesmen, use an inventory stock list in connection with inventory checks at Atlantic dealer stations; do you recall that?

A. Yes, sir.

Q. Isn't that the Firestone basic inventory guide that you are referring to which is used?

A. It could be, or it could be one that they devised themselves.

Q. It could be one that Firestone devised themselves?

A. Or the salesmen's own, yes.

Q. Or the salesmen's own?

A. Yes.

Q. In connection with new types of TBA products which come on to the market, you referred to the fact that Atlantic personnel, salesmen particularly, must train Atlantic dealers on new TBA products; is that correct?

A. Yes, sir.

Q. And in that connection you referred to dry-charge batteries—the Firestone dry-charge batteries and tubeless tires?

A. Yes, sir.

Q. Isn't it true that competitors of Firestone also have such products, and such training would be necessary in any event, not just because Firestone happens to have them?

A. I picked those two examples because they are new to the industry and I believe Firestone was the first 2737 with the dry-charge battery. We took the opportunity to train our dealers in handling them. The tubeless tire is something that I would image all tire companies have tubeless tires today.

Q. So in any event, you would have to train your dealers whether it was a Firestone brand or some other brand, as I understand your answer; isn't that correct?

A. We make it a point to train our dealers on all new innovations in our industry.

Q. During the course of your testimony you have made it quite clear, I think, that TBA is an essential part of the complete service station operation. Isn't that correct?

A. I feel that way; yes, sir.

Q. Isn't it true that an Atlantic service station dealer must carry TBA to remain competitive with other service station dealers of other oil companies?

A. We believe that.

Q. And isn't it an essential part of Atlantic's program to keep its dealers competitive so that, of that fact itself, it must devote considerable time to TBA with respect to its service station dealers?

A. Yes.

Q. So it follows, then, that it is to the interests of Atlantic to train dealers, teach dealers, and so on, in connection with TBA to protect its own interests with 2738 respect to competitive oil stations; is that correct?

A. Yes, sir.

Q. And that is true regardless of the brand which is carried by any service station, isn't that true?

A. Yes, sir.

Q. So isn't it true, and based on your testimony now, that all the expenses incurred by Atlantic in connection with TBA, do not in and of themselves represent a saving to Firestone because they are expenses which would be normally incurred by Atlantic in the course of its normal business operations with service station dealers?

A. If I understand your question correctly, we would be doing a good bit of this training and teaching anyway.

Q. I have just one more group of questions.

I would like you to turn your attention to loans to dealers for a moment.

A. I beg your pardon?

Q. I would like to ask you some questions about loans to dealers.

In your experience as District Manager, have loans been made to new service station operators or to new operators of old service stations?

A. Yes, sir.

Q. And have those loans at times been in inventory instead of cash, or in lieu of cash?

2739 A. Not normally. It might be in gasoline, but that is a very—we don't like to do that.

Q. How is it in connection with TBA?

A. We would much rather do it on equipment.

Q. Do you recall any loans to dealers in stock rather than in cash?

A. We would make it in money unless we used gasoline. We don't like to use gasoline, so we keep away from that. Otherwise we would make loans based on a cash loan to a dealer with his equipment as collateral.

Mr. Kelaher: No further questions.

Mr. Thompson: No questions.

Hearing Examiner Kolb: That is all, Mr. Hathaway.

(Witness excused.)

Mr. Thompson: May we have a short recess?

Hearing Examiner Kolb: Yes:

(A short recess was taken.)

2740 Hearing Examiner Kolb: The hearing will come to order.

RICHARD D. THOMAS, was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Freed.*

Q. Mr. Thomas, will you give the reporter your full name and address?

A. Richard D. Thomas, 2803 Arlene Circle, Baltimore 7.

Q. Mr. Thomas, what is your present employment?

A. I am presently a promotable dealer salesman in the Baltimore district for the Atlantic Refining Company.

Q. What did you do before entering Atlantic's employ?

A. I went through normal schools, went to college, and upon graduation went into the United States Air Force, where I served as a personnel officer for two years.

Q. And how did you happen to communicate with the Atlantic Refining Company concerning employment?

A. When I came out of the service my brother was employed by Atlantic in Erie, Pennsylvania, as a promotable dealer salesman, and he told me the advantages of working with Atlantic and how well he liked it, and suggested that I try it.

2741 Q. By whom and when were you employed by Atlantic Refining Company?

A. I was employed in October of 1954 by Mr. Hathaway.

Q. What was your first assignment as an employee of Atlantic?

A. The first thing they did was send me to the Atlantic dealer training school in Miami, Florida, on November 1, 1954.

Q. Was that a regular dealer training school, a five-weeks course?

A. It was a regular dealer training course of five weeks, of which there were approximately sixteen Atlantic dealers, prospective dealers, and four of us company employees.

Q. That is four, including yourself?

A. Including myself.

Q. What was your assignment in the Atlantic Company thereafter when you finished school?

A. When I came back from school I was assigned as a service salesman to work with various promotable dealer salesmen throughout the entire Baltimore district.

Q. And how long did you serve as a service salesman in the Baltimore district?

A. From December, late December 1954 to January 14, 1957.

Q. In January 1957 was your position changed?

A. At that time I was promoted to promotable dealer salesman.

2742 Q. And have you had that same position in the same district since?

A. I have.

Q. How many customers of Atlantic Refining Company do you serve as a promotable dealer salesman?

A. I have nineteen customers.

Q. And are those customers lessee dealers or contract dealers?

A. They are all lessee dealers.

Q. Would you just describe generally the territory which you handle?



A. Yes. My territory roughly would include West Baltimore, Southwest Baltimore, City and County, and Anne Arundel County.

Q. In the course of serving your customers, do you have occasion to know them rather intimately?

A. Yes. In calling on your dealers you get to know them very well, by their first names, you develop a friendship with the dealer.

Q. How often do you cover your customers?

A. Well, I try to call on all my dealers at least once a week. Some dealers maybe twice a week.

Q. And in serving your customers of the Atlantic Refining Company, what is your major purpose?

A. My major purpose is to sell Atlantic gasoline and motor oil, the most of it I can.

2743 Q. Under whose immediate supervision do you work?

A. My immediate supervisor is Mr. Munch.

Q. And his position is?

A. Sales supervisor.

Q. Are you also supervised by Mr. Hathaway, the district manager?

A. From time to time Mr. Hathaway also supervises me.

Q. In carrying out your activities as a promotable dealer salesman, are you free to establish the policy under which you will operate?

A. No. I have to go by the policy as given to me by the Atlantic Refining Company.

Q. And what is your understanding of the consequences if you are ever to breach that policy?

A. I think I would lose my job.

Mr. Kelaher: Is that a speculative answer?

By Mr. Freed:

Q. Is that your understanding, that you would lose your job?

A. I think I would lose my job if I violated policy.

Q. In connection with the leasing of service stations to your customers, what is your responsibility as a promotable dealer salesman?

A. Well, the first responsibility is to keep these stations operated at all times.

2744 Q. What is your understanding about the availability of operation of service stations by Atlantic Refining Company itself?

A. As far as I am concerned, it just doesn't exist. I never had that experience.

Mr. Kelaher: May I have that question and answer?

(The reporter read the record.)

Mr. Kelaher: I have to admit I am confused on the question. You are talking about the availability of dealers?

Mr. Freed: I will clarify that.

By Mr. Freed:

Q. Is the alternative of operating stations under your supervision as an Atlantic promotable dealer salesman by Atlantic Refining Company itself available to you?

A. It is not.

Q. So far as you understand, all of the stations have to be operated by lessee dealers?

A. That is correct.

Q. And what would be the consequence to you, so far as you understand, if you were not able to provide lessee dealers to operate the stations under your jurisdiction?

Mr. Kelaher: Objection. I hesitate to object, but we are getting into some speculation here about the consequences of whether he does this or does that. I think we should stick to the facts.

2745 Mr. Freed: On the contrary, your Honor, I think that his understanding of his responsibilities is very important in this regard. Whether they are potential or are not is not important, so long as he understands that this is the situation and operates under that basis. I think it is germane to the issue.

Hearing Examiner: Kolb: The objection will be overruled.

The Witness: Again I would have to repeat, I think I would lose my job if I am not good enough to keep these stations operated.

By Mr. Freed:

Q. I want to go back to one point, and that is what do you do in connection with the leasing of service stations to dealers? What function do you perform in the decision to grant a lease?

A. I have no decision to grant a lease. What I do is primarily recommend to my sales supervisor, and Mr. Hathaway, respective lessees.

Q. Do your dealers know that that is your function, your sole function?

A. I think so, yes, sir.

Q. Whose decision is it to grant a lease on behalf of Atlantic Refining Company?

A. Mr. Hathaway, the district manager.

2746 Q. In the event that there would be a recommendation against renewing a lease, what would be your responsibility?

A. Well, in that case we would have discussed the lessee's shortcomings with the sales supervisor and he and I together would submit our recommendations to Mr. Hathaway in sufficient time to give the lessee plenty of notice.

Q. Would you have to make a detailed justification of any such recommendation?

A. In most cases it would have to be quite detailed. However, I have never had that experience.

Q. You have never made any such recommendation?

A. No.

Q. Have you, on the other hand, ever made recommendations that leases be renewed?

A. I have always made recommendations that leases be renewed.

Q. Have you had occasion to lose lessee operators of stations under your supervision?

A. Yes. This is one of the things that we are always faced with, losing dealers.

Q. What are the common reasons why you will lose a lessee dealer?

A. Well, they are varied, but perhaps the most common are family dislikes for service station operation, meaning extra hours that the husband isn't accustomed to; 2747 secondly, he just isn't able to make any money. In other words, he doesn't—he gets into financial difficulties. In some instances the dealer or the lessee feels that he can better himself in another business, and he will go into a competitive business or an entirely different business.

Q. And in these cases does the initiative for leaving the station come from the lessee dealer himself?

Mr. Kelaher: Your Honor, I think it might be better if we didn't have leading questions on questions of this type.

Mr. Freed: I am sorry.

Hearing Examiner Kolb: I will let him answer that question. It is obvious, anyway.

By Mr. Freed:

Q. You may answer the question. Do you want it read back?

A. Would you read it back?

(The reporter read the question.)

A. Yes. In all cases, with my experience, all cancellations have come from the lessee.

Q. From your experience is it easy or difficult to locate satisfactory dealers to take the place of dealers who have left?

A. It is one of the most difficult jobs, part of my job, is locating dealers. Satisfactory dealers are very hard to find. We search many ways to find them.

2748 Q. What are some of the search methods?

A. We use newspaper ads, which usually bring you quite a few bodies, but not too many good, sound businessmen. You waste a bit of time there. So the next thing we use, we call on competitive service station dealers. We find that quite profitable because these people are people who are already in the business, they like the business, and they are much easier to talk into maybe coming over to your station. We also talk to route salesman, dairy salesmen, postmen, farmers, and what have you.

Q. By any chance in your inquiries do you discuss this subject with your existing lessee dealers?

A. That is also another source, if you have lessees that are quite well known in their area, have been there for many years, they are many times able to offer you a lead as to a person who would like to go into the service station business.

Q. What is Atlantic's TBA policy?

A. As I understand Atlantic's TBA policy, we have sponsored TBA, but it is there for the dealer to accept it or reject it at his desire, his wishes.

Q. By "sponsored TBA" you mean the Firestone line of TBA?

A. I mean the Firestone line of TBA.

Q. Where did you learn of that policy?

A. I first heard of that policy when I attended 2749 the dealer training school in Miami, Florida. During that training course they brought out the fact that this was a good line of TBA, it had many advantages, but still it was up to the dealer to accept it or reject it. And I was subsequently informed of it at various sales meetings that we had while I was a service salesman, and again when I made promotable dealer salesman, Mr. Hathaway restated this policy to me.

Q. Do your dealers know about the "no forcing" policy?

A. Yes, they do.

Q. How do they know about it?

A. Well, I tell them of this policy when I first talk to them as a prospect in their homes. And they later learn about it, if they are successful in getting us interested in them, at an interview, and finally they learn about it again through a "no forcing" letter which they get from our regional manager after the signing of the lease.

Q. Do they also hear about it if they pass the first two steps and eventually get to Mr. Hathaway as a prospective lessee?

A. Well, yes. That was what I was referring to as the second step. In other words, when we take them in the office, if they are satisfactory to us, acceptable as a lessee, the sales supervisor and I take them in to Mr. Hathaway's office and he again goes over the TBA program with the dealer.

Q. And that TBA program includes a statement of the policy?

2750 A. "No forcing."

Q. Is that so?



A. That is true. That is correct.

Q. From your experience as a salesman, do you agree personally with the "no forcing" policy as a method of doing business?

A. I do.

Q. Why?

A. I think that is the only effective way to sell, is through salesmanship, getting the customer to like you so that he will buy from you. In the long run you will sell more TBA that way.

Q. In the granting of leases to new dealers is the handling of Firestone TBA ever made a condition or understanding of securing a lease?

A. It has never been, with my experience.

Q. Mr. Thomas, what kind of TBA do your dealers handle, anyhow?

A. They handle all kinds of TBA. I mean by that all brands. They buy anything they want.

Q. Do some of them buy very small quantities of Firestone TBA?

A. I have some that buy hardly any. I have others who buy a considerable amount.

Q. Can you give me some examples of those?

2751 A. Yes. Fred Kochler, a dealer of mine at North and Woodbrook, I can count on my fingers the dollars and cents figures that he has given as far as sponsored TBA.

Q. Has he been a lessee for very long?

A. Yes. Fred has been a lessee dealer for some seventeen years.

Q. More example, if you will.

A. With reference to Mr. Varnadore, who is in partnership with Joe Wyninger, they have been buying Exide batteries for years. Ever since I have known them, and I understand a considerable time before that.

The McNeill brothers at Glensfalls Parkway—

Q. Before you leave Varnadore—

Mr. Kelaher: I object to the latter part of his answer with respect to his understanding about the period before he arrived.

Hearing Examiner Kolb: Just limit the testimony to this man's time and that he has been with the company.

Mr. Freed: I beg your pardon.

Hearing Examiner Kolb: Let's limit his testimony to the time he has been with the company.

Mr. Kelaher: Is that part of the answer stricken, your Honor?

Hearing Examiner Kolbs: I doubt if that will be necessary. Let it stand.

2752 By Mr. Freed:

Q. Can you give us further examples with that limitation of their dealer buying practices since you have been a promotable dealer salesman in Baltimore?

A. The McNeill brothers at Glensfalls Parkway, I installed them in the station last summer and they initially stocked Autolite batteries.

Q. Have they carried them since?

A. They are still carrying Autolite batteries.

Then Gill Heiderman, who is a dealer with some twelve years with the Atlantic Refining Company, who buys practically no sponsored TBA.

Q. Do you have some further examples?

A. George Anderson, at 5640 Ritchie Highway, buys Fram filters exclusively, and has since I have been there, and handles Gates radiator hose and fan belts exclusively.

Willis McKeel, at Ritchie Highway and Jumper Hole Road, handles Best batteries and stocks them, and has done that since I have had him as one of my customers.

Q. Does he handle any other brand of batteries in addition?

A. No, he doesn't.

Virgil Tackett, Mountain Road and Rockpoint Road, handles Delco batteries exclusively.

Cake and Dorr, a partnership, at Hanover and Pottee Streets, handle Fram filters exclusively, Bowers batteries, at least fifty percent.

I think that pretty well summarizes the—

Q. Can you think of anyone else? Can I refresh your recollection if I mention Amos Wells?

A. Oh, yes. Amos Wells, Clifton and Denison Streets, who has been I consider one of my finest dealers, buys US Royal and Kelly tires and stocks them. And he also purchases AC filters and spark plugs from an outside jobber.

2754 Q. Would it refresh your recollection if I mentioned Dick Gallagher?

A. Yes. Dick Gallagher, who is a past contract dealer of ours, we recently built a new station and he is now a lessee dealer and handles Dunlop tires and tubes. He did so as a contract dealer and he does now as a lessee dealer.

Q. Does he carry Dunlop batteries also?

A. I thought I said batteries. Yes, he does.

Q. From your experience, Mr. Thomas, does the purchase by a lessee dealer of TBA from sources other than Firestone play any part in Atlantic's decisions on granting promotions to better stations or improving existing stations?

A. No. My experience has been that the reverse is true, not that we penalize a dealer—

Q. Can you give us—

Mr. Kelaher: I don't believe he finished.

By Mr. Freed:

Q. Go ahead.

A. We actually have rewarded some of our dealers with newer type stations in spite of the fact that they buy outside or non-sponsored TBA.

Q. How about some examples?

A. An example is Amos Wells, who we are presently building a new three-bay service station for, to be ready in about two months. He will be the lessee.

2755 Q. Is that rebuilding of an existing station?

A. This is an entirely new location. He is moving from his present location to a new location. And Dick Gallagher, we completely remodeled his station at the present location.

The Gilbert Heiderman station is scheduled for remodeling within the next three months.

Q. Could you describe the extent of remodeling in that case?

A. A remodeling job, as I know it, is one where we completely tear down the old structure and build from the ground a modern service station.

Q. And that is what you are doing for Heiderman right now?

A. That's right.

Q. Is there any other example you can give us of similar action?

A. Well, I have an example, the McNeill brothers at Glensfalls Parkway. I am presently considering splitting the partnership up and giving Purcel McNeill, one of the acting partners, another one of my stations.

Q. And have you already discussed this with Mr. McNeill?

A. It has been discussed.

Q. Has this matter also been discussed with Mr. Hathaway?

A. It has.

Q. It has his approval?

A. He thinks it is a good move.

Q. In the course of calling on your customers, do  
2756 you have occasion to see on display in the stations  
the TBA which is not bought from the Firestone  
store?

A. Yes. All the merchandise in the station is displayed  
openly, and I have an opportunity to see it at any time I  
like.

Q. Have you ever asked or told any of your customers  
not to display any of that TBA which was not bought from  
Firestone?

A. No.

Q. Were you present this morning, Mr. Thomas, when  
Mr. Hathaway was discussing and describing what Atlantic  
promotable dealer salesmen do to promote the sale of Fire-  
stone TBA?

A. Yes, I was.

Q. Do you, as a promotable dealer salesman, do the  
various things which Mr. Hathaway described as being  
done by people of your category?

A. Yes. He described it very well.

Mr. Freed: I have no further questions, Mr. Kelaher.

Mr. Kelaher: May we have a short recess, your Honor?

Hearing Examiner Kolb: All right.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to  
order.

2757 *Cross-Examination by Mr. Kelaher.*

Q. Mr. Thomas, I would like to get a couple of dates  
clear. You became a promotable dealer salesman in the  
Baltimore area on January 14, 1957; is that correct?

A. That is correct.

Q. And at that time did you know that the Federal  
Trade Commission had issued a complaint against Atlantic

Refining Company and Goodyear with respect to TBA commissions paid to Atlantic by Goodyear and Firestone?

A. No, sir; I didn't learn of that until just about three weeks ago, maybe—four weeks ago.

Q.—The complaint was issued in January, 1956. And you haven't heard about it until when?

A. About three or four weeks ago.

Q. About three or four weeks ago?

A. Yes, sir.

Q. Never was it ever mentioned at discussions of Atlantic personnel, Atlantic salesmen?

A. Not to my knowledge.

Q. You stated that your major purpose was to sell Atlantic gas and motor oil, and direct; is that correct?

A. That is correct.

Q. Do you attempt to sell Firestone TBA at all?

A. I do.

2758 Q. Is it to your financial advantage to have an Atlantic dealer purchase Firestone TBA?

A. Not at the present time; no, sir.

Q. I am asking you to answer Yes or No.

A. No.

Q. Whether it is to your financial advantage?

A. No.

Q. It has already been stipulated in the record and Mr. Hathaway testified that as a promotable dealer salesman you are on a quota system. Isn't that true?

A. There is no quota system whatsoever.

Q. Don't you receive extra compensation?

A. There is an extra compensation plan, which is available to the promotable dealer salesmen.

Q. Don't you operate under that plan?

A. It is available to me.

Q. What do you mean, "it is available"? You either operate on it or you don't.



A. I mean simply this: I have not received any compensation under it.

Q. But you have been operating under it at all times since you have been a promotable dealer salesman, haven't you?

A. It has been available to me.

Q. I would like to explore that a little.

Are you assigned a specific amount of Firestone TBA for a particular period?

A. No, sir; I am not.

Q. How is your extra compensation computed?

A. The extra compensation plan is computed based on the previous year's performance.

Q. Take it a little bit from there. In other words, this being 1958, if your 1958 sales of Firestone TBA exceeded your 1957 sales of Firestone TBA, you get extra compensation, don't you?

A. Providing you meet the minimum percentage increase.

Q. Providing you meet the quota, isn't it?

A. I don't have a quota, sir.

Q. You just said, now, that first you have a base figure. You say it is the previous year, so that would be 1957?

A. Yes, sir. /

Q. Then you are assigned a quota which is a percentage increase over that base figure; isn't that correct?

A. I choose to call it "performance", performance factor.

Q. I don't think we have to engage in a battle of semantics. It seems to me that it is a very simple operation. You have a base figure which is your prior year's figure. That is number one, right?

A. Yes, sir.

Q. If you exceed a certain percentage, by a certain per-

centage, that amount, you get extra compensation, don't you?

2760 A. Yes, sir.

Q. So, getting back to my question, it is to your financial advantage to have an Atlantic dealer purchase Firestone TBA, is it not?

A. It hasn't been to date.

Q. That is not in response to the question. I think the response is obvious. It would have to be yes.

A. Put it this way; I have not ever received any extra compensation for the sale of Firestone TBA.

Q. Is that because you haven't tried to receive extra compensation?

A. It is not because I haven't tried.

Q. Then you have tried to receive extra compensation; is that correct?

A. I do try; yes, sir.

Q. And that is an incentive to you, to increase your sales of Firestone TBA, is it not?

A. I think it is an incentive; yes, sir.

Q. You think it is? It is, isn't it? Isn't the answer yes?

Hearing Examiner Kolb: He answered "Yes".

By Mr. Kelaher:

Q. You went down the list on ten Atlantic lessee dealers who are serviced by you and referred to the fact that they were buying non-sponsored Firestone TBA, Do you 2761 recall those names?

A. Yes, sir.

Q. The first one you mentioned, one of the first you mentioned was J. Varnadore. Do you recall that?

A. Yes.

Q. Isn't it true that Mr. Varnadore purchases Firestone tires?

A. It is.

Q. And stock them?

A. He does purchase Firestone tires.

Q. And isn't it true that Mr. Varnadore also purchases some Firestone accessories?

A. He purchases Firestone tubes, hardly any accessory items.

Q. But he does purchase some?

A. Very little.

Q. Is there an Exide battery sign on Mr. Varnadore's station?

A. There is an Exide battery rack in the inside of the sales room.

Q. I have asked you if there was an Exide sign on the station.

A. What do you mean "on the station"?

Q. On the outside of the station, is there an Exide sign?

A. No, sir.

Q. Is there a Firestone sign on the station? On the window?

2762 A. I think so, sir.

Q. Was your testimony to the effect that none of the dealers you mentioned purchased any Firestone TBA? Was that the substance of their testimony with respect to these ten dealers?

A. If I understand you right—

Q. You listed ten dealers. I want to know if none of the ten purchased Firestone TBA at all.

A. No, I don't think there is any that purchased none. There are some so close to it that they could be called None.

Q. Let me ask you about George Anderson, for example. Does he purchase any Firestone TBA?

A. He purchases some Firestone tires and tubes.

Q. Tires and tubes are an important part of the TBA program, are they not?

A. Yes, they are..

Q. I will pick some at random here. Let me ask you about Cake and Door. Do they purchase any Firestone TBA?

A. They purchase very, very little Firestone TBA. Practically none.

Q. What batteries do they handle?

A. Bowers.

Q. Do they handle any other batteries?

A. They handle one or two Firestone batteries.

Q. On direct examination, you said they handle 2763 50 percent Bowers and 50 percent of some other battery, which was unnamed. The other was Firestone, wasn't it?

A. That is correct, sir.

Q. So where does that leave us? Do you mean they only have two Bowers batteries in the—

A. At the last sales call they had two Bowers and two Motor Kings, which is a Firestone battery.

Q. And two Firestone batteries?

A. Yes, sir.

Q. So the 50 percent figure is slightly misleading, I would think.

Mr. Freed: Is that a question, Mr. Kelaher?

Mr. Kelaher: That is an observation.

Mr. Freed: I move that be stricken from the record.

Hearing Examiner Kolb: The observation may be stricken.

By Mr. Kelaher:

Q. I think you did state that some of the other dealers whom I have not mentioned also buy some Firestone TBA: is that correct?

A. Yes, sir.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Are there any further questions, Mr. Freed?

2764 Mr. Freed: That is all, your Honor.

Hearing Examiner Kolb: Thank you, Mr. Thomas.

(Witness excused.)

2766 Mr. Thompson: I call Mr. Russell Cooley to the stand.

RUSSELL E. COOLEY was called as a witness for the Respondent the Atlantic Refining Company and, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Thompson.*

Q. Mr. Cooley, give your full name and residence address for the reporter?

A. Russell E. Cooley, 755 Chenango Street, Binghamton, New York.

Q. Mr. Cooley, are you presently the lessee of an Atlantic Station at Chenango and Nolan Streets in Binghamton, New York?

A. Yes.

Q. Is your station located in the City of Binghamton itself?

A. No, it is in the suburbs in Binghamton. It is called Hillierest.

Q. The Binghamton area, I think, is sometimes referred to as the Tri-City or Triple City area?

2767 A. That is correct.

Q. What are those three cities?

A. Binghamton, Endicott and Johnson City.

Q. And they are all contiguous?

A. Yes.

Q. I believe, sir, that you first took this station with a partner in about 1947; is that correct?

A. January of 1947.

Q. Who at that time was your partner?

A. His name is Paul Purple.

Q. Then did he later withdraw from the station?

A. Yes, he did, because of health reasons.

Q. About when was that?

A. About 1950 or '51.

Q. Since that time, you have been the sole lessee of this station?

A. That is correct.

Q. You have, I believe, a three-year lease?

A. Yes.

Q. This is what, your second three-year lease?

A. Second one. I believe it terminates this coming January.

Q. Now, before you became an Atlantic lessee, what had been your experience?

A. I was with the Metropolitan Life Insurance Company as an agent for five years, counting three years 2768 in the Army. Before that time, I had worked and had leased a Socony Service Station.

Q. So that you had had three types of experience: One as a life insurance agent and second in the Army?

A. Yes.

Q. And third as a lessee of a Socony Station?

A. Right.

Q. As a matter of interest, sir, where did you serve in the Army?

A. I was in the European Theater in an armored division.

Q. Now going back, sir, to the operation of your station in Binghamton with Mr. Purple from 1947 until 1950 or '51, did you in those days handle TBA at that station?



A. Yes, we did.

Q. Do you recall whether at that time there was or was not a tire shortage where tires were still difficult to get?

A. I believe there was a tire shortage but the greater shortage was before we took the station over. In '47, I believe tires became more available.

Q. What kind of tires were you handling at that time at that station?

A. Lee, L-e-e tires.

Q. What kind of batteries?

A. Exide batteries.

Do you recall at about 1951, Atlantic Refining Company commenced to sponsor Goodyear TBA in your area?

A. Yes, I do.

Q. Do you recall whether you did or did not attend a dealer meeting at which the Goodyear plan was explained by Atlantic?

A. Yes, that was held at the Arlington Hotel.

Mr. Kelaher: Which hotel?

The Witness: Arlington.

By Mr. Thompson:

Q. Do you recall generally, sir, what was said about it by the Atlantic people—can you tell us?

A. I believe they explained they were going to handle Goodyear TBA products although it wasn't necessary for us to buy strictly Goodyear products. It would be to our benefit to handle Goodyear tires because of the advertising and quality of the product.

Q. Was it made clear to you, sir, that you could accept or reject the plan?

A. Yes, it was. I think it was so stated in a letter that we received from the home office about that time.

Q. Now, sir, I am now going to show you three letters,

the first of which has been identified in this case as CX 150, which is dated March 1, 1951 and signed by Mr. Colley, Vice President of Atlantic Refining entitled "A Statement of Atlantic's TBA Policy" and ask you to look at that carefully and let me know whether you recall having 2770 received it at or about the time of its date?

A. Yes, I remember it.

Q. The second document I want to show you has been identified as CX-206, and is, also a letter from Mr. Colley dated August 28, 1952 called "A Restatement of Atlantic's TBA Policy" and I ask you to look at that letter carefully and let me know whether at or about the time of its date, you recall receiving it?

A. Yes, sir, I remember that one also.

Q. I had showed you these letters immediately before you testified, had I not?

A. Yes.

Q. Then do you recall receiving still another letter in 1955 in the form which I now show you signed by some one other than J. D. Estlow, this document having been identified for this record as CX-207?

A. Yes, I remember this too.

Q. With respect to CX-207, the one that I have shown you is signed by Mr. J. O. Estlow, Manager of the Philadelphia and New Jersey Marketing Region, do you recall who the manager of the New York region for Atlantic was in 1955?

A. I don't believe I do. I think it was Ostrander, O-s-t-r-a-n-d-e-r.

Q. The letter you received would not have been signed by Mr. Estlow but by Mr. Ostrander or whoever was 2771 the Region Manager in New York at that time?

A. Yes. I'm not positive who it was at that time.

Q. Thank you, sir. Now, since Atlantic commenced promoting and sponsoring Goodyear TBA brand in 1951,

what tires have you actually handled or carried at your station, sir?

A. I have carried several brands. My main stock, of course, is Goodyear, but if a customer wants a Lee tire or Firestone tire or a Goodyear tire, I don't hesitate to buy it.

Q. Have you from time to time bought Lee tires from Mr. Boungiornk?

A. Yes, I have. He was my supplier.

Q. Is that spelled B-o-u-n-g-i-o-r-n-k?

A. Yes. He is an Atlantic dealer about half a mile from my station and he handles Lee tires.

Mr. Thompson: Now, would you mind repeating for me, please, his answer to the question about Lee tires.

(The reporter read the answer as requested.)

By Mr. Thompson:

Q. For a time after Atlantic commenced to promote and sponsor the Goodyear tires, where you handling Lee at your station?

A. Yes. Pardon me, at the time, we changed to Goodyear?

Q. Yes.

A. We were handling Lee tires.

Q. After the change, too?

2772 A. Yes, I continued to handle them for some time.

Q. About how long, sir, do you recall?

A. Probably a year.

Q. Why did you shift to Goodyear tires?

A. Well, I found that the name "Goodyear" is more acceptable to the public, quality of the brand, the advertising and the fact that they have a large stock available.

Mr. Kelaher: Could I have that answer again, please?

(The reporter read the answer as requested.)

By Mr. Thompson:

Q. Now, since 1951, Mr. Cooley, what brand of batteries or brands have you been carrying at your station?

A. Exide batteries and on occasion I have secured Willard or Delco batteries for a customer.

Q. Have you been handling Goodyear batteries at all since 1951?

A. I have sold a few Goodyear batteries also.

Q. Now, about your accessories, what sources of supply have you used since 1951?

A. I buy from several wholesalers, namely, Whipple's Automotive; Rose Unit Parts; United Auto Parts, Binghamton Auto Supply and several others besides those I mentioned.

Q. Do you buy accessories in any substantial quality from Goodyear?

A. No, not many accessories.

2773 Q. Are these non-Goodyear TBA items to which you have referred openly displayed at your station?

A. Yes, they are.

Q. Do you have an Exide sign at your station?

A. Yes, I believe there is.

Q. Do you carry Gates belts and hose?

A. Yes, I do.

Q. Are there signs or advertising pieces relating to those two Gates' items at your station?

A. Yes, there are.

Q. Do you have a Johnson's wax sign at your station?

A. I believe there is one.

Q. Do you have decals on your windows?

A. There were decals on the windows and they remodeled the station about two years ago as far as the windows were concerned and I believe there are no decals on the windows now, the new windows.

Q. Do you have Exide battery testers and chargers at the station?

A. Yes.

Q. Do they bear the Exide name?

A. Yes, they do.

Q. Do you have one of these Bowes thermometers on your station, do you recall?

A. I had a Bowes thermometer on the station. I 2774 believe it has been removed but I do have a Bowes sign saying "Tubeless repairs."

Q. Now, are all these non-Goodyear TBA items displayed so that they are visible to the Atlantic salesman and representatives who come to your station?

A. Yes, they are.

Q. Have they always been so displayed?

A. Yes, they have.

Q. Do you sell TBA on Atlantic credit cards?

A. Yes.

Q. Do you sell non-Goodyear TBA on Atlantic credit cards?

A. Yes.

Q. Have you ever been criticized for so doing by Atlantic?

A. Not at all.

Q. Do numerous TBA jobbers solicit your business?

A. Yes, they do.

Q. Do jobbers of tires other than Goodyear solicit your business?

A. Yes, they have.

Q. Can you mention some of the brands which you have been solicited to buy in recent years?

A. Goodrich Tire Company; Firestone Tire Company and recently an Atlas representative. I believe Atlas is an Esso product

Q. Do you from time to time buy from any of these tire jobbers?

2775 A. Yes, I have.

Q. Mr. Cooley, have you ever been criticized by Atlantic for carrying non-Goodyear TBA?

A. No, I haven't ever.

Q. Have you ever been told to stop buying it?

A. No.

Q. Have you ever been told to get it out of your station?

A. No.

Q. Ever been told to hide it?

A. The way my station is constructed, it would be physically impossible to hide anything.

Q. Has Atlantic ever sought to force or pressure you to buy Goodyear TBA?

A. Not in the least.

Q. Have you at all times felt free to buy any brand of TBA that you wanted?

A. Yes.

Q. Have you in fact always done so?

A. Yes, I have.

Q. In the 21 years in which you have been an Atlantic lessee, has your lease been renewed many times?

A. Yes, I believe you made an error in the number of years there.

Mr. Kelaher: Yes, I think so.

Mr. Thompson: Excuse me, 11.

2776 The Witness: You said 21, it has been 11.

By Mr. Thompson:

Q. I mean 11?

A. Yes, that has been true.

Q. Upon the occasion of the renewal of your lease, has Atlantic ever brought forth the fact that you handle primarily non-Goodyear TBA?



A. No.

Q. Have you ever at any time felt that your lease was in jeopardy because of your handling of non-sponsored TBA?

A. Never.

Q. Are there a lot of oil companies actively in the Tri-City Binghamton area?

A. Yes, several.

Q. A number of service stations of competing companies?

A. Yes.

Q. In the years in which you have been at your station, have you built up a personal clientele who visit you and who rely upon you as a gasoline and TBA supplier?

A. Yes. My station is 90 percent neighborhood trade. I'm not on a through highway.

Q. Do you know many of your customers by name?

A. At least 95 percent of them I know by their first name.

Q. They know you by name?

A. Yes, sir.

2777 Q. Incidentally, sir, do you give personal credit to some of your customers?

A. Yes.

Q. So that they have charge accounts with you?

A. Yes.

Q. Have you from time to time been solicited by competitors of the Atlantic Refining Company to take a lease from one of them?

A. Yes.

Q. With all due modesty, would you care to mention a couple of names?

A. Yes, brand names—you mean of other companies?

Q. Yes. I mean what other companies have solicited you to take stations?

A. Well, as I said before, my station is on a neighborhood street and the reason it is—there is a short four-lane bypass which is about three-quarters of a mile long and on this three-quarters of a mile of a four-lane highway, I think there are six different companies represented by new stations. And at some time or other, I think I have been solicited at least twice by all of these companies. There is a Gulf station, a Socony station, a Sonoco station, two Esso stations, and American station and a Rotary station.

Q. Rotary is the name of an individual which does business in the Binghamton area?

2778 A. Yes, I think the company is known as the Southern Oil Company.

Q. Mr. Cooley, with all those opportunities, why have you stayed with Atlantic?

A. Because I am happy in my present situation.

Q. Is your station from time to time inspected by Atlantic representatives?

A. Yes, it is.

Q. Are the results of such inspection discussed with you by Atlantic?

A. Sometimes.

Q. On the occasions when they do discuss the inspection, is the point raised that you are dealing in non-Good-year TBA?

A. No, it never is. I think the primary reason for those inspections is either appearance or service.

Q. Does the sales supervisor or the district manager sit down with you once a year or occasionally and have a review of your business?

A. Yes, they do.

Q. In the course of such discussions, do they make suggestions to you about how you might improve your earning capacity at the station?

A. Yes, I believe that is the object of those meetings, to produce a balanced selling job.

Q. Do you find such discussions helpful to you?

2779 A. Yes, they are.

Q. At such discussions, do they ever criticize you for not carrying Goodyear TBA?

A. No.

Q. Were you one of the Binghamton dealers who was honored by a visit from a Mr. Lipsky back in 1953?

A. Yes, I was.

Q. Did Mr. Lipsky identify himself as an investigator of the Federal Trade Commission?

A. Yes, he did.

Q. Did he seek to talk to you about your operations at the station?

A. Yes.

Q. Did you have such a discussion?

A. Yes, we did.

Q. Was it a fairly long discussion?

A. Yes, I believe it lasted about two hours.

Q. What was his objective and purpose in talking to you, if you can tell us briefly?

A. I believe the object of the discussion was that he was trying to discover if Atlantic were using any force on the Atlantic dealers to handle Goodyear TBA.

Q. At the time of his visit to you, did you have non-Goodyear TBA openly displayed at your station?

A. Yes, I did.

2780 Q. As he talked to you, did he write things down on a piece of paper?

A. Yes.

Q. Were the words he wrote down your words or his?

A. They were his words. I signed my name to the final sheet.

Q. Did he discuss the provisions of your lease with you?

A. Yes, he did and he asked to see a copy of my lease.

Q. Did he mention to you a provision in the lease which is sometimes called a 30-day cancellation clause—do you recall it at all?

A. Yes, I do.

Q. What was his objective and what did he say about it?

A. Why I gathered that he was trying to find out if Atlantic would ever use the 30-day clause as a whip in case they wanted us to handle an exclusive product. I believe I answered I didn't know and I didn't believe so.

Q. With respect to your own personal dealings and relationships with Atlantic, did you in your own words give him substantially the same information which you have given us here today?

A. Yes.

Q. That was back in 1953?

A. Yes.

Q. And since that time, you have in fact been carrying any brand of TBA you wanted to carry?

2781 A. Yes.

Q. Now, Mr. Cooley, the distinguished looking gentleman on my left here is counsel for the Goodyear Company and he may want to ask you some questions. The gentleman on my right, the particularly handsome gentleman, is Mr. Kelaher who represents the Federal Trade Commission and I'm sure he is going to have some questions for you.

Mr. Ingraham: I have no questions.

Hearing Examiner Kolb: You may cross-examine.

*Cross-Examination by Mr. Kelaher.*

Q. Mr. Cooley, I would like to review some of the answers you gave in response to questions by Mr. Thompson to see if we have them clear in our minds. Since Atlantic

began the Goodyear TBA program, which was in or about March 1951, you stated on direct examination that you carried Goodyear tires as your main stock, is that correct?

A. Yes, that is correct.

Q. You also stated that you carried other brands of tires, is that true?

A. Yes, I do. I don't carry them in stock necessarily but I do obtain them if the customer wants other brands.

Q. If the customer requests you obtain that particular tire?

A. Yes.

2782 Q. The only tire you stock is Goodyear?

A. That is right. I believe I still have a few Lee tires on my shelves left over from Lee stock.

Q. Now, with respect to batteries, you say that since Atlantic changed over to the Goodyear TBA program, you have carried Exide batteries as your principal stock?

A. That is correct.

Q. And also on occasion, you had purchased some batteries bearing the Willard or Delco brands, is that correct?

A. Yes, customer request.

Q. You also stated that since Atlantic changed over to Goodyear TBA program you have only carried a few Goodyear batteries, is that correct?

A. That is right.

Q. Now, with respect to the accessories, you stated that you make purchases from several wholesalers?

A. Yes.

Q. Is that true?

A. Yes.

Q. You also stated that you do not make many purchases of accessories from Goodyear?

A. That is right.

Q. Now, with respect to your service station identifi-

cation, prior to the time that Atlantic began to carry the Goodyear TBA line, you stated you stocked Lee tires 2783 and Exide batteries, is that correct?

A. Yes.

Q. Did you also—were they purchased from Atlantic?

A. Yes, I mentioned Frank Boungiorak as my lead supplier. The reason I mentioned that is because he is very close to me where I have to go across town to get to the Atlantic warehouse. At the same time I did get some Lee tires from the Atlantic warehouse as well as Exide batteries.

Q. That is when Atlantic was selling Lee tires and Exide?

A. They were in the TBA business.

Q. At that time did you also purchase some accessories from Atlantic?

A. Yes, I did.

Q. Now, at that time, did you have any window decals on your station or outdoor signs?

A. Yes.

Q. Before the changeover to Goodyear?

A. Yes, I did.

Q. What brands did you have out there?

A. I believe there was Exide batteries decal on the window and I believe a Lee tire decal.

Q. What happened after Atlantic changed over to Goodyear TBA with respect to those signs?

A. Well, they were removed by, I believe, a Goodyear salesman and a Goodyear decal was put up.

2784 Q. Did you request them to remove the Lee and Exide signs and put up the Goodyear signs?

A. No, I don't believe I requested it.

Q. Beg pardon?

A. No, I don't believe I did request it.



Q. You made no request. Did they just come around and take down the Lee-Exide and put up the Goodyear?

A. Yes. They do that quite frequently with promotions. Our Atlantic salesmen and Goodyear salesmen come around and put up different tire sales signs. In fact, they even come and take them down.

Q. You are talking now about Goodyear signs?

A. Yes.

Q. Now, I would like to go over with you the circumstances which led up to your discontinuing Lee tires and beginning to handle Goodyear tires and other Goodyear products. Do you recall specifically how you first learned about the fact that Atlantic was going to sponsor Goodyear TBA?

A. I believe we first received a letter from Atlantic explaining that they were going out of the TBA business and we would be able to get supplies and tires from Goodyear Tire and Rubber Company. I think that was followed by a meeting at the Arlington Hotel.

Q. What happened at the Arlington Hotel?

A. Well, there was a discussion and display of 2785 Goodyear products and it was explained to us how it would be to our benefit to handle Goodyear tires and TBA.

Q. Now, who were present at the Arlington Hotel meeting to which you refer?

A. We were Atlantic employees as well as Goodyear.

Q. Was the Atlantic district manager there?

A. Yes.

Q. Was the Goodyear district manager?

A. Yes.

Q. Were all the Atlantic dealers in the Binghamton area present to your knowledge?

A. I believe they were.

Q. Was it made clear to you at that time that Atlantic would like to have you carry Goodyear TBA?

A. Yes, it was.

Q. Was it made clear to you that Atlantic expected you to carry TBA?

A. No, I don't believe there was anything said that they expected us to but I think they explained that it would be to our benefit to handle Goodyear products.

Q. Did Atlantic make it clear to you that you were supposed to handle Goodyear TBA?

A. No.

Q. Now, I would like to discuss the signed statement you referred to in your direct examination. You 2786 stated that Mr. Lipsky spent about two hours with you?

A. Yes.

Q. So you recall that discussion very well?

A. Yes.

Q. And you also recall that you read the statement, do you not?

A. Yes, I did read it before I signed it.

Q. To your knowledge and belief, the statements appearing thereon were truthful, were they not?

A. Yes.

Mr. Kelahe: Mr. Examiner, I would like to have the reporter mark for identification the document which I hand her as CX-483, which I believe is the next number.

Hearing Examiner Kolb: Exhibit 438 is the next one. (The document referred to was marked Commission's Exhibit 483 for identification.)

By Mr. Kelahe:

Q. Mr. Cooley, I am going to show you Commission's Exhibit 483 for identification and ask you to state what that is?

A. (After inspection.) I believe this is a statement that I gave Mr. Lipsky in 1951.

Q. 1953?

A. 1953, I'm sorry.

Mr. Kelaher: Your Honor, I now offer in evidence Commission's Exhibit 483, which is a statement of 2787 Russell E. Cooley dated December 8, 1953, bearing his signature and also the signature of Henry I. Lipsky, Attorney Examiner, Federal Trade Commission.

Mr. Thompson: May I have the purpose of the offer?

Mr. Kelaher: The purpose of the offer is to abide by the Hearing Examiner's ruling in our Baltimore hearings. As I recall it, if I were to interrogate the witness on the signed statement for any purpose, it should be offered in evidence. That is the reason I am doing it at this time.

Mr. Thompson. On that basis and for the reasons stated by Mr. Kelaher, I have no objection. May I ask the witness whether he can read this writing because I can't.

Hearing Examiner Kolb: The document will be received in evidence as Commission's Exhibit 483.

(The document referred to, heretofore marked for identification COMMISSION'S EXHIBIT 483, was received in evidence.)

Mr. Thompson: This is in the nature of a voir dire question.

Hearing Examiner Kolb: You said no objection.

Mr. Thompson: I just wanted to ask one voir dire question. This stuff is not in your writing, is it?

The Witness: No, it isn't.

Mr. Thompson: Can you read it? Can you read the fellow's writing?

2788 There are parts of it that I can't quite make out.

By Mr. Kelaher:

Q. At the time Mr. Lipsky prepared this statement, he conferred with you for about two hours and he went over everything in the statement with you, did he not?

A. Yes, he did.

Q. At the time you knew everything that was in the statement and you could read the statement and it was discussed with you at length, isn't that true?

A. That is right.

Q. If there were any additions or corrections, you were asked to make them at that time, isn't that correct?

A. Yes.

Q. Now, Mr. Cooley, on direct examination today, you stated that you do not stock any batteries but Exide, is that correct?

A. That is correct. I believe there is one Goodyear battery in the station at the present time.

Q. Now, you also stated on cross-examination that has been the situation since Atlantic changed over to Goodyear TBA in 1951?

A. Yes and that was the situation before. Exide has been the only battery I have stocked.

Q. Now, in your signed statement, under two 2789 brands of TBA carried, you have batteries, "Goodyear and Exide (only stocks cheap battery, formerly Resolute, now All Weather.)" Now, both the Resolute brand name and the All Weather brand name are brands of the Goodyear Tire and Rubber Company, isn't that correct?

A. Right.

Q. So your statement on direct that you never stocked Goodyear batteries is wrong, isn't it?

A. There was a time when they first came out with dry charge batteries and Goodyear Tire and Rubber were the first ones to come out with a dry charge battery where the

acid is shipped separately and because of storage problems, I bought a few Goodyear batteries at that time. Exide at that time had not come out with dry storage batteries.

Q. However, you let this Court believe that at no time since the changeover to Goodyear TBA had you stocked Goodyear batteries and, as a matter of fact, you have stocked them.

Mr. Thompson: I object to the form of the question. I don't know whether he has led this Court to believe that or not. I would be happy to have the Court believe it but it doesn't seem to me that is the proper kind of question to ask Mr. Cooley.

Hearing Examiner Kolb: I will sustain the objection.

Mr. Thompson: May I also suggest, Mr. Kelaher, when you examine a witness with respect to a statement 2790 in Mr. Lipsky's handwriting, which he was induced to sign, that you show it to him.

Mr. Kelaher: I object. I don't understand your frivolous statement. I not only showed it to him, he has read it and there is nothing in this record to indicate he was induced to sign it. He has read the statement carefully. I gave him all the time he wanted to read.

Mr. Thompson: When you ask questions about this statement, I would appreciate it if you would show the witness the document to which you are referring and the part to which you have reference and are quoting. If you don't want to adopt the suggestion, I will just object when you follow some other practice.

Mr. Kelaher: You just keep objecting. I am not going to adopt it.

Mr. Thompson: I will start objecting when you get out of bounds like I always do.

Mr. Kelaher: I am just attempting to get the facts here and there is no attempt to embarrass the witness. If there

is a conflict in his testimony, I think we are entitled to show it.

By Mr. Kelaher:

Q. Now, you also stated on direct examination that you purchased from a number of suppliers and that you purchased very few accessories from Goodyear, is that correct?

2791 A. Yes, I do purchase a few however from Goodyear too.

Q. You do purchase a few. And what products have you purchased from Goodyear Service Store since March 1951?

A. Well, I have purchased Purolator oil filters.

Q. Do you stock Purolator oil filters?

A. Yes, I did. However, I don't purchase my oil filters from them at the present time. I believe they handle AC filters now. I do have Purolator filters in stock.

Q. But you have purchased from Goodyear on a stocking basis in the past?

A. Yes.

Q. Now, what other accessories have you purchased from Goodyear Service?

A. I believe Simonize products and DuPont products, polishes, DuPont chemicals.

Q. Have any of those been purchased on a stocking basis?

A. Yes, they have. Sometimes they come up with a spring deal.

Q. So your statement that you only make a few purchases of accessories from Goodyear Service Stores, I believe, is slightly understated, is that correct?

A. No, I would say just a few.

Q. Even though you purchase items on a stocking basis?

A. Have occasionally. Most of my TBA is purchased



from salesmen who come to the station and I don't particularly buy from any certain one. It is whatever I happen to need when a certain salesman comes along.

Q. Now, at the time of December 1953, when Mr. Lipsky called at your station, the only other TBA supply of accessories that you mentioned was Whipple's Auto Supply, is that correct?

A. That is possible.

Q. At that time you didn't mention this whole list of TBA jobbers you referred to in your direct testimony, is that correct?

A. It is possible I was buying only from Whipple's because Whipple is the nearest supply house to my station.

Q. So at that time, you were purchasing accessories from Goodyear Service Store and from Whipple's Auto Supply and from no one else?

A. I don't believe that is true. I think I had on occasion purchased from these other houses I mentioned.

Q. On occasion, but your purchases were very few from the other houses?

A. Very few.

Q. Now, I would like to discuss with you the events leading up to your changeover to Goodyear TBA. In your signed statement, reference is made to the fact, and I will show you this part of your statement, under 5, and ask you if that refers to the meeting at the Arlington Hotel to which you referred in your testimony. I quote:

2793. "In 1950, ARC District Manager introduced District Manager for Goodyear, explained that ARC going out of TBA business."

Was that the Arlington Hotel meeting?

A. Yes.

Q. Then the next sentence: "Mr. Russell, ARC salesman together with Goodyear representative would like to

see Goodyear TBA." Was that statement made at the meeting or was that made later individually with you, do you recall?

A. I would imagine that statement was made later as Mr. Russell was my salesman.

Q. He was your salesman?

A. Yes.

Q. He, together with a Goodyear representative, called on you, is that correct?

A. I believe it is.

Q. They discussed the situation with you?

A. Yes.

Q. And at that time Mr. Russell said that they would like to see you go Goodyear, is that right?

A. Correct.

Q. Did the Goodyear representative also say that, do you recall?

A. Yes, I would imagine he said he would like to see us handle Goodyear.

2794 By Mr. Kelaher:

Q. Let me put it this way. On direct examination, you gave a number of reasons why you changed from Lee-Exide, and so on to Goodyear TBA. Do you recall your answers on direct?

A. Yes.

Q. You referred to such things as quality, advertising, public acceptance and the fact that they had a large stock available and so on. Wasn't the real reason the fact that you knew that in order to remain in the good graces of Atlantic, it was to your advantage to carry Goodyear TBA?

A. No, I don't believe that was true at all. I think what I said, we were supposed to handle Goodyear. I think what I meant there by the word "supposed" is the fact that

all Atlantic stations were soon to be associated with 2795 Goodyear Tire and Rubber and in order to benefit by the advertising and the name "Goodyear," the public acceptance of the name "Goodyear," it would be to my benefit to handle Goodyear batteries.

Q. Now, as I understand your answer now, you knew that all of the Atlantic stations in the Binghamton area were going to switch over to Goodyear TBA?

A. I didn't know they were going to but I knew that they were going to be offered Goodyear products and tires and that the majority of them were going to handle Goodyear Tire and Rubber.

Q. That is exactly what happened?

A. Yes, that is what happened.

Q. Now, you also state in your signed statement that you make reference to a survey. Do you recall that at the time? The statement on this signed statement says:

"Survey conducted ARC that Goodyears was more favorable." Do you recall any statements by Atlantic to you that Goodyear was more favorable to Atlantic dealers than other brands? Do you recall that statement?

A. I don't recall the exact statement. I think it was brought out in meetings.

Q. What did they say about the survey, do you recall that?

A. I believe they said they had a survey in the State of Pennsylvania—

2796 Q. (Interposing.) Which was Atlantic?

A. Yes, and that I think Firestone Rubber and Goodyear were considered in our area and they found that Goodyear had better acceptance than Firestone.

Q. Did they ever ask you which one you preferred?

A. Yes, I believe they have asked me my thoughts along the line and I have told them Goodyear.

Q. Was this prior to 1951?

A. I can't say for sure.

Mr. Kelaher: May I have a short recess, your Honor?

Hearing Examiner Kolb: We will take a short recess.

(A short recess was taken.)

2797 Hearing Examiner Kolb: The hearing will come to order.

By Mr. Kelaher:

Q. Mr. Cooley, prior to Atlantic's switch over to TBA, you carried Lee tires on a stocking basis, did you not?

A. Yes.

Q. And that means you carried them from about 1947 to sometime in '51, over four years, approximately?

A. That is right.

Q. Lee tires have a good consumer acceptance in your area, do they not?

A. Yes, very good.

Q. And did Lee tires have a road hazard guarantee, which is particularly acceptable, isn't that true?

A. It is very attractive. That was one of the things I felt bad about when we left Lee tires was the fact we were giving up the road hazard guarantee. Goodyear guaranteed against workmanship and material. Since that time, I have found in the past five years I have had three tire adjustments on Goodyear tires.

Q. Three what?

A. Tire adjustments. At the time we were handling Lee tires I found we had a tire adjustment everyday.

Q. You had no trouble getting adjustments on Lee?

A. No, the tire I replaced the chances were in a 2798 short time I would be adjusting that.

Q. But the fact is that Lee does have good consumer acceptance and Lee is also advertised in your market area, too, isn't it?

A. So.

Mr. Thompson: I object to the double questions, Mr. Kelaher. I don't know which one he is answering. You asked about advertising and you also asked about public acceptance in the same question. It is impossible to tell which question he is answering when you ask a double question.

Mr. Kelaher: I will rephrase it. I think the witness understood it, but I will rephrase it.

By Mr. Kelaher:

Q. Lee tires are advertised in your market area, too, are they not?

A. They are, but I will say since Atlantic has changed to Goodyear—

Q. (Interposing.) I am just asking you. Well, you go ahead, finish your sentence.

A. I wanted to say since Atlantic has changed to Goodyear, Lee tire has become almost extinct in my area.

Q. Thank you.

And, of course, prior to when Atlantic was carrying Lee tires, Lee tires were a big seller in your area?

A. They were as far as Atlantic was concerned.

2799 Q. Now, was it also true that you could get a lower price on Goodyear tires?

A. There may be some instances where the price is a little lower on Goodyear, but I think they are comparable.

Q. Now, you also stated one reason you preferred Goodyear versus Lee was due to quality. You don't profess to be an expert on the quality of the tires, do you?

A. No, I don't; but I believe that the Goodyear tire is a much better tire.

Q. In your own opinion.

A. In my own opinion after 10 years of experience in the tire business.

Q. But, Lee also puts out a tire which is comparable to Goodyear as to line, do they not?

A. Yes, they do.

Q. Now, weren't you able to purchase Lee tires from Mr. Buongiorne after Atlantic discontinued the Lee program?

A. Yes, I was, and did on occasion.

Q. So that you did have a stock available if you wanted them?

A. Yes, sir.

Q. So you did state on direct examination that one reason you preferred Goodyear was because they had a large stock available. But you also had a stock available of Lee, is that true?

A. Yes, but the Goodyear service stock was much 2800 larger and more varied than Frank Buongiorne's was.

Q. Of course, there was also a Lee factory branch in Syracuse, I believe, where you could have obtained them; is that true?

Mr. Thompson: Just a minute. Mr. Kelaher is—

Mr. Kelaher (interposing): I also believe there was a Lee factory branch in Syracuse, New York, where he could have obtained Lee tires.

The Witness: Yes, there was. I don't know whether it is still there or not.

By Mr. Kelaher:

Q: There was at the time, but there is a change over?

A. Yes.

Q: Now, have you had any difficulty since you changed to Goodyear tires competing with the Goodyear service store?

A. No, I have not.

Q. Well, I would like to refer you to this statement in your signed statement.

Mr. Thompson: Would you be kind enough to show it to him, Mr. Kelaher?



(The document was shown to the witness.)

Mr. Thompson: Thank you.

By Mr. Kelaher:

Q. I would like to read the statement that he can't match the competition of Goodyear service store. Recently Lee wanted to sell Links Aviation Company some 2801 truck tires, but Goodyear store quoted Links a better price than the dealer could offer. His list was \$59.00; Store sold for \$60.00, almost as cheap as he could buy tires from the Store: Do you recall that?

A. Yes. I think that is true on a fleet such as Links would have. The Goodyear store does give them a fleet price.

Q. So you do have difficulty competing with the Goodyear service stores in some instances or it is in many instances?

A. No, I would say that is an isolated case. Evidently, I did have trouble with that case.

Q. Do you think that was somewhat unfair that your purchase price was about the same as Goodyear's selling price?

A. Well, I think probably they are selling Links tires at a free price, the same price as they would sell them to me as far as that is concerned.

Q. The point is the Goodyear service store is in competition with you for business, is it not?

A. Yes, that is true.

Mr. Kelaher: No further questions.

*Redirect Examination by Mr. Thompson.*

Q. Did you object to the installation of a Goodyear decal on your station?

A. No.

Q. Did you consent to it?

A. Yes.

2802 Q. You were not requested or subpoenaed to appear in this proceeding as a witness for the Federal Trade Commission, were you, sir?

A. No.

Q. I can readily understand why, sir.

Mr. Thompson: That is all.

*Recross Examination by Mr. Kelaher.*

Q. With respect to the service station identification, I believe you did testify, and your statement so shows that they did not ask your permission, neither Atlantic nor Goodyear asked your permission to put up the Goodyear window decals, did they?

A. I don't know as they asked my permission. They told me that they were going to put them up. I think if I had objected that they wouldn't have put them up.

Q. However, according to your statement, they did not ask your permission and at least they went up; is that correct?

A. Yes, they went up. But I was present at the time, and if there had been any objection, I certainly would have told them.

Mr. Kelaher: No further questions.

Mr. Thompson: Thank you, very much, Mr. Cooley.

(The witness withdrew from the stand.)

Mr. Thompson: I will find Mr. Buongiorne. He is  
2803 our next witness.

Hearing Examiner Kolb: We will take a few minutes recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Thompson: If your Honor please, may I call Mr. Frank R. Buongiorne to the stand.

